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## Maritime security : issues and implications for maritime administration

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**WORLD MARITIME UNIVERSITY**

Malmö, Sweden

**MARITIME SECURITY: ISSUES AND  
IMPLICATIONS FOR MARITIME  
ADMINISTRATION.**

By

**RAJEEV KUMAR SINHA**

India

A dissertation submitted to the World Maritime University in partial  
fulfilment of the requirements for the award of the degree of

**MASTER OF SCIENCE**

In

**MARITIME AFFAIRS  
(Maritime Administration)**

2002

## Declaration

I certify that all the material in this dissertation that is not my own work has been identified and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views and are not necessarily endorsed by the University.



Rajeev Kumar Sinha

5<sup>th</sup> September, 2002

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## **Dedication**

To my wonderful brother-in-law Col K.Y.S Panwar for the infinite inspiration and encouragement received. I offer to dedicate my effort, to your memory that keeps in our heart as a guiding image. As your untimely demise engulfs one in to a stoic silence of acceptance and memories become the bridge to reach out, in remembrance of the enlightened purity of thoughts that touched every soul with reflections of a understanding source and inspiration, seldom found. Unfolding every moment amidst the realms of reality so real like the rainbow on the horizon. One knows would soon cease to be, yet can one be held guilty for hoping it stays on forever to spread its glory even if from afar, forever. The patriot in you lives on through your dedication as a proud soldier of your motherland.

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To my understanding wife Aruna, special thanks for her unflinching support endowed with care and thoughtfulness throughout, that paved the way towards accomplishment.

My loving appreciation goes to my daughter Yashaswi "The happiness of my world".

## **ABSTRACT**

Title of Dissertation: **Maritime Security: Issues and Implications for Maritime Administration**

Degree: **Master of Science**

The dissertation is a study into maritime security related impact on national maritime administration seen from regulatory and legal point of view. The subject details on the policy formulation facet with in the national framework.

The study starts with a look at the present security scenario in maritime domain and provides an analysis of the threat scenario influencing the vital interest of a country and current developments in the industry. A brief description of factors behind these threats and the vulnerability of shipping are examined in this context.

Legal issues encompassing the security regime both at international and national level form the base and hence are considered in detail as to provide past, present and future insight into this aspect.

IMO's ongoing work on security will ultimately be the fulcrum of activities in national arena and have been evaluated to provide a foresight for the maritime administrator and the shipping industry.

National policies required to meet the challenges are examined in the context of the global security scenario. The effect of proposed security related regulations, at different levels, and the challenges to implement and enforce them are deliberated. The need for a response and repression strategies have been also evaluated.

The concluding chapter provides the brief outlook of security overview seen from national point of view and also includes a set of suggestions for national administrators for improving maritime security without affecting trade and transport.

Keywords: Maritime Security, National Policies, Legal, Threats, Regulatory, Implementation.

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### List of Abbreviations

AIS	Automatic Identification System
BIMCO	Baltic and International Maritime Council
CCIT	Comprehensive Convention on International Terrorism
CMI	Comite Maritime International
CSI	Container Security Initiative
CSR	Continuous Synopsis Report
C-TPAT	Custom Trade Partnership
CTU	Containerized Transportation Unit
ECAC	European Civil Aviation Conference
EEZ	Exclusive Economic Zone
ETA	Estimated Time of Arrival
EU	European Union
FAL	Facilitation Committee
GT	Gross Tonnage
IAEA	International Atomic Energy Agency
ICAO	International Civil Aviation Organization
ILO	International Labor Organization
IMB	International Maritime Bureau
IMO	International Maritime Organization
ISM	International Safety Management
ISPS Code	International Ships and Port Facility Security Plan
ISWG	Intercessional Security Working Group
LNG	Liquefied Natural Gas
MARAD	Maritime Administration
MIT	Massachusetts Institute of Technology
MSC	Maritime Safety Committee
MSWG	Maritime Security Working Group
OAS	Organization of American States
OECD	Organization for Economical Co-operation and Development
OPA	Oil Pollution Act
SAARC	South Asian Association on Regional Co-operation
SOLAS 74	Safety of Life at Sea Convention, 1974
SPI	Ship / Port Interface
STCW 78	Standards of Training and Certification of Watch keepers Convention, 1978
SUA	Suppression of Unlawful Acts against Safety of Navigation, 1988
TEUs	Twenty Feet Equivalent Units
UK	United Kingdom
UN	United Nations
UNCLOS	United Nations Convention on Law of the Sea, 1982
UNCTAD	United Nations Conference on Trade and Development
USA	United States of America

USCG	United States Coast Guard
VDR	Voyage Data Recorder
VLCC	Very Large Crude Carrier
VTs	Vessel Traffic Station
WCO	World Customs Organization
WMD	Weapons of Mass Destruction

## Chapter I

### Maritime Crime and Security- the Issues

#### 1.1 Introduction

*There can be no acceptance of those who would seek to justify the deliberate taking of innocent civilian lives regardless of cause and grievances. If there is one principle that all people can agree on, surely it is this. (Kofi Annan, Secretary General, United Nations, 2001)*

The concern for security in Maritime industry in today's world is intense and direct. The industry has always been associated with adventures and risk, but the present times unfolds a different kind of peril which looms large over the business of shipping and that is much more grave than ancient piracy and robbery. Piracy may well be the worlds third oldest profession, reference to it were made in Justinian's Digest in 529 AD, in King John's ordinance of 1201 and numerous European Laws and international treaties from early time. It was also the subject of Papal Bull in 15<sup>th</sup> century dividing Atlantic Ocean between Spain and Portugal for responsibility in controlling piracy in its area. The Treaty of Tordesillas confirmed this arrangement (Birnie, 1987).

As in those days pirates were regarded as *hostes humani generis*, enemies of the whole human race, present day maritime criminals can aptly be described the same way. The vulnerability of the maritime industry against numerous security risks brings in the apprehensions for a much dreaded consequences in terms of loss of lives, damage to property and installations, huge financial losses and immense liabilities. The Sept.11 syndrome has made countries imagine even unimaginable.

The threat of mega-terrorism ceased to be considered as pure fiction. as can be gleaned in the following passage:

*The events of that day, and the subsequent anthrax mail attacks in the US, drastically altered public perceptions of the transport system. Suddenly the containers, thousands of gallons of oil and LNG and hundreds of cruise ships with passengers and crews that pass through US ports were not seen as the sign of lively economy but as a potential weapon that could wreak havoc on port cities...*(Fairplay Feb 14<sup>th</sup> 2002)

The security agenda has precipitated firmly on political and administration work nationally and internationally. These concerns are being reflected by urgent and adequate measures being taken in IMO. As per views of William O'Neil (2001), Secretary General, IMO:

*In submitting the assembly resolution I am fully aware of the political connotations unavoidably linked with the issue of terrorism. At the same time, I was not oblivious of IMO's technical character, which I am determined to preserve. In the light of the heavy legacy passed to civilized world by the recent tragic events, I strongly believe that we, the maritime community have a role to play and a contribution to make in the world*

The IMO Secretary General has repeatedly impressed upon IMO member states their 'moral responsibility' to work together and to do whatever it takes to protect passenger, crew and port workers, as well as vessels and their cargo.

## **1.2 The challenge for governments**

Whatever is the outcome of the debate, one thing is very clear, that the Maritime Administration is a significant key player in the sphere of Maritime Security. Administration as a regulator and facilitator of service faces the challenges of developing a mandatory global security regime for ships and facilities and effectively

enforcing it for enhancing the shipboard and port security. The situation for most of the administrations is complex as the issue is multidisciplinary, multifarious, and relatively new besides it also requires additional resources lacked by them, moreover, their clear role in the entire issue is still undefined. While the industry is reeling under a host of regulatory controls in areas of safety, environmental issues, management, training, certification, crew welfare and economical issues the new perspectives on security will bring more restrictions on free practices international shipping had enjoyed in the past. An obligation for the administration also lies in bringing balance between regulation and freedom, perhaps more so in the case of security. As this complex problem involves building a system against an unknown threat, whereby the easy way out would be to build a fence or wall all around which in the end would certainly shut down the trade and transport network. A compromised approach on the part of the administration is needed to provide reasonable protection against range of perceived threats while ensuring freedom of trade and shipping.

The growth and potential of open registry is now accepted as a fact even by most traditional maritime countries and within IMO itself. Security concerns of open registry administrations is much more intricate and complex due to liberal policies and practices adopted in areas of ownership, registration, crewing, manning, survey and certification and overall control. Speaking on implications of Flags of convenience on national security, William Schubert (2002), Maritime Administrator, Department of Transport, USA says that "Potential impact of the lack of transparency within the open registries, could lead to a serious threat to our Nation's safety and security. The international corporate operations of the maritime industry are a complex domain – often one over which the country exerts very little control. Open registries are often complicated and convoluted corporate operation."

Some of the matters relating to security is bound to arrest these practices and affect the industry adversely. The silver lining in bringing the matter of security to the

forefront of international bodies with a determination to achieve all round international cooperation is in the fact that it will ultimately bring about collateral value added achievements in reinforcing maritime security in the areas of piracy, armed robbery, thefts, drugs and narcotic control, arms trafficking, immigration, cargo related crimes, custom enforcements on smuggling, etc. The administration would also benefit from check on documentations and false certificates.

Lack of jurisdiction by national authorities and infancy or non-existence of regional or bilateral treaties has given boost to criminal activities and increased vulnerability of merchant ships as soft targets. Agreement for an international mandate over maritime security is presently in focus but for implementation of such regime would require a committed approach from all the member states. The exercise for the Administration is arduous and demanding in terms of incorporating legislations and enforcing them at uniform level.

### **1.3 Economics of maritime security- Trade off between efficiency and security**

The characteristics of an efficient, lean, high-velocity global supply chain - openness, ubiquity, diversity, and agility - are also why it is an extremely attractive target for terrorists. The global supply chain is an accessible and tremendously efficient delivery system whose reach can allow a terrorist to strike virtually anywhere in the world – with potentially catastrophic results. In addition, the supply chain is the foundation of the economy. The health and well being of our economy is directly tied to the continuous availability of efficient freight transportation. It has been estimated that a disruption that shuts down the global supply chain will cost the world economy \$1 trillion dollars per week.(Vikram Verma,2002)

More public spending on security will threaten other developmental areas especially for developing countries and recent emerging maritime nations. Private sector spending on equipment, personnel and premises will reduce productive capacity and



profit margins besides increasing freight. Tighter border control and more frequent inspections and escort obligations which result in delay and longer waiting time, will affect Just in Time supply chain management. The proposed new security requirements are hence, likely to affect the cost of transportation across the borders, through both higher direct costs and longer delivery time. Since remarkable decline in shipping costs has been important factor in shaping supply chain management over last decade increasing opportunities for global specialization and increase in productivity, reversing the trend towards higher affordability of transportation and indiscriminate border control would risk long lasting negative impact on international trade.

Overall industry experts have estimated that the total cost of security –inspired measures could amount between 1 and 3 percent ad valorem (OECD 2002). Maritime shipping rates rose sharply soon after the attacks by 5 to 10 % on average, but the trend was soon reversed. Probably steep deceleration of aggregate demand and drop in fuel costs are underlying factors (MIT Center for Transportation Studies, 2001).

Even though it is impossible to avoid trade off between efficiency and security in the short term, it can be eliminated in medium and long term and additional costs can be minimized by co-operative approach between the private and public sector in both design and implementation phase. Defining what constitutes a secure shipment is relatively straightforward, but implementing that vision is enormously difficult because of the number of different entities in different jurisdiction involved in a shipment. It is thus important that all the agencies involved including the Administration, have their roles and missions clearly defined and private sector knows what is expected of it.

#### **1.4 Global village of seafarers**

A vast majority of international trade of a country is carried in foreign ships owned by foreign nationals and manned by foreign crew. This has been the characteristic of international shipping. This also means that the security of ports and other installations are now largely at the mercy of agencies outside the nation. If terrorists can be trained to be aircraft pilots, what prevents them from becoming seafarer where a much lesser degree of skill is needed. Shipping employs around 1.2 million seafarers.

The multinational identity of seafarers, their unrestricted mobility regardless of nationality for employment and their freedom of movement makes them a part of one global village of seafarers. Countries in wake of the terrorist attack in US are taking measures to monitor not only ships and cargo but also crew. ILO is considering reviewing the standards for identification, verification and background checks for seafarers. It is trying to strike a balance between security facilitation and seafarers right being aware of international nature of shipping and close to international status of seafarers. The restrictions imposed by identification of seafarers have some positive impact as far as human element factors are concerned. Whether this new security mandate will provide much-needed breakthrough in STCW implementation in anti fraud and forgery prevention is still to be seen.

#### **1.5 Transparency and information sharing**

The recent events have shown the need for guarding ships, personnel, passenger, cargo and shore interests against potential attacks. Since the volume of trade, vast number of ships and seafarers make it impossible to track and inspect each and every item , the only immediate solution lies in information sharing and transparency. Providing a database of information and updating the knowledge of each other is a very strong shield to distract the criminals. The proposed International Code for the

Security of Ships and Port Facilities has mandatory functional requirements in areas of gathering and assessing information with respect to security threats and exchanging such information with appropriate contracting governments.

Ownership and control of the ship are extremely relevant to the entire security issue. Information on the ship, its cargo and people: full transparency in this information is desirable, but could be difficult to achieve. The industry and trade has benefited from the mask of anonymity and will certainly resist the disclosures for whatever reason it may be.

Nonetheless shipowners around the world are mobilizing against the proposal. They contend that scrutiny should focus primarily on the vessel operator, and that the ship manager should design a responsible person for security as the first point of contact. They reject the notion that making ownership details public will help counter terrorism. The information on the ownership of a vessel, they say, is practically irrelevant, since so many shareholders are simply passive investors of one form or another with no management involvement. If a ship owner is involved in terrorism, they argue, he is unlikely to put it down on paper, and anyway, such activity would be a function on his role as a manager rather than owner.

#### **1.6 National legal regime and international cooperation – role of IMO**

The response to maritime crime and terrorism is three pronged, namely military aspects, regulatory aspects and aspects related to cooperation (international, regional and bilateral). In order to combat crime at sea effectively all three are equally important. A setback in any one of them would severely undermine the entire exercise. States must have jurisdictions over the offences in order to enforce the regulations and there may be requirement for adjustment of legislation. The case of *Alondra Rainbow* has highlighted the need for national legal regime in cases of piracy. Most of the countries have little or nothing when it comes to maritime crime

especially terrorism. The revised SUA Convention will be tackling many issues when incorporated into domestic law and will help these countries address the legal sphere.

The initiatives taken by US Coast Guard and US MARAD, in seeking a multilateral approach through the IMO, which if it succeeds, would result in harmonized measures applied internationally, has been applauded and appreciated by all in the industry. Jhon C Lyras (2002), President of the Union of Greek Shipowners has said, "IMO for us is crucial, you can not have different security regulations pertaining to different trades. It will stop the trade eventually." It is in recognition of expanded jurisdiction of IMO into areas of Maritime Trade that the security of entire chain related to maritime transportation has been entrusted into its hands. All connected with this trade whether Administrations, Coast Guard, Customs, Port Authorities, Immigration, Trade bodies, Labor bodies, and Shipping Federations have accepted IMO's role in this arena. Thomas Timlen(2002), of Baltic and International Maritime Council (BIMCO) says "*It is appropriate for IMO to be the lead Organization to coordinate efforts aimed at enhancing security in Maritime environment. The IMO has become recognized as the worlds regulatory body for maritime trade.*" Although primarily concerned with Maritime Safety issues, security is not new to IMO. The only point is that it has become very topical and relevant at the present.

### **1.7 Application of technology**

It is necessary to identify a long-term sustainable security posture to develop new technologies to combat security threats. A host of technology for identification, tracking and monitoring ships, its cargo and personnel on a global basis are available in the market. The Automatic Identification System is already targeted to come into force in near future and so is the black box. A range of container sealing and tracking devices are being presented to the governments by the industry. While there is no

question that the technology can help address the security challenge, one must be careful not to assume that it can solve every security problem. The selection of the right technology for application on a global basis must be given due consideration and should be analyzed in the context of specific security challenges.

### **1.8 The purpose of this dissertation**

Maritime crime encompasses a wide range of issues including piracy, smuggling, drugs and arms trafficking, illegal immigrants and cargo related crimes besides terrorism. While all the issues are of equal importance to the industry and affected countries, those related to terrorism has taken an overriding priority in recent time for reasons known world over. It will be beyond the scope of this paper to discuss each and every issue in detail concerning maritime crime, and hence the central theme of this paper revolves around maritime security as concerned to acts of terrorism.

The purpose of this dissertation is both policy formulation analysis and study of appropriate organizational structure in identification of emerging maritime threats. The focus is on national maritime administration's role and capabilities with regard to these issues. The topic would be incomplete unless a study is made of recent developments in international field concerning international conventions, treaties and agreements in this area. Further it is directed to propose and recommend future course of action for the MARAD in developing a suitable maritime security policy and its effective implementation. The on going proposals at the IMO have been considered while evaluating the effects on the administrations.

## Chapter II

### Present Maritime Security Scenario

#### 2.1 The background

Some authors are of the view that maritime terrorism is as old as shipping it self, only the means of perpetrating varies(De Bievre, 2002). The definition of piracy has evolved over the years in response to states needs as evidenced in state practices. The boundary between piracy and maritime terrorist it self is quite thin and indistinct. Menefee (1990) states that “ Legally, the characterization of such activities as piracy in the past should sensitise us to the possibility that the terrorist act of today’s maritime insurgents may profitably be considered in the light of piracy *jure gentium*.” As per Bernie (1987) also “ Sometimes states even licensed piratical acts: corsairs and privateers were commissioned to commit piratical acts against the enemies of their countries. Are we to equate modern terrorists with them?”

While hypothetically the stance taken by these writers may be rational and logical, practicality of enforcement proves otherwise. It is useful to keep maritime terrorism separate from other forms of violence at sea in order to avoid analogies, which may prove to be false. For it cannot be taken for granted that remedies, which states are allowed to take against the more traditional crimes are also available in the cases of maritime terrorism. Proponents of these views describe maritime terrorism as a recent phenomenon as compared to other violent activities disrupting peaceful navigation at sea. This recentness of the problem poses difficulty in taking forceful measures against maritime terrorism by countries around the globe (Ronzitti, 1990). Traditional forms of crime have a long history. Piracy for instance dates back as long as the existence of shipping itself. A host of other criminal acts against shipping followed such as smuggling of contrabands, arms, drugs, illegal migrants and other

cargo related crimes. The origin and development of these activities are related to variety of factors; major ones being economic conditions and disparity amongst various regions, population variations and concentration necessitating migration , political imbalances, regional conflicts and instability and different regulatory regimes (USCG, 2000).

There is no question that at their essence acts of terrorism are political actions born of political intentions and seeking political consequences. This political element is what distinguishes terrorism from other no-less violent acts done for economic, social or personal purposes. It is trite but no less true that one person's terrorist is another person's freedom fighter (McDorman,2001). The 'Private end' Vs 'Political Nature' controversial debate has been ongoing for several years. The private ends requirement appears to exclude attacks by maritime terrorists, and arguably, environmental extremists, from being piracies, because of their public nature. Some, however, have opined that public and non-private ends are not necessarily synonymous; that many terrorist attacks veer into the area of common crime, and that actions undertaken by environmentalists may be considered private in nature. Greenpeace, for example, when engaged in anti-dumping protests, was found guilty of piracy under international law by the decision of a Belgian court. The political purposes of terrorist acts have made it very difficult, if not impossible, for the international community to agree upon a definition of terrorism.

The various UN General Assembly resolutions, Security Council resolutions and international negotiations and conventions that seek to deal with acts of terrorism and terrorists inevitably stop short of meeting a lawyer's correctness regarding the definition of the key concept of terrorism. Such a "failure" is not surprising given that the international community of states is composed of such varied and different states. The difficulties of constructing a legal definition of terrorism are not confined to the international level however, but also figures in various domestic systems.

Definitional problems date back at least as far as the American Civil War, when the Union deemed the operations undertaken by Confederate naval sympathizers to be "piratical" in nature. Even in the environment of such controversy of separating these two acts, the historical background of maritime terrorism can be traced back to middle of 19<sup>th</sup> century beginning with *Cagliary* a Sardinian merchant ship seized by Italian insurgents in 1857.

The seizure of the Portuguese passenger ship *Santa Maria* is however, considered as beginning of terrorist acts in modern times. The Portuguese ship was seized by Enrique Galvao and a team of Portuguese and Spanish insurgents in January 1961. Galvao and his followers claimed to be point men for a revolt against Salzar and Franco on the African colonies and on the Iberian Peninsula. Portuguese reaction was to brand *Santa Maria's* insurgents as pirates and to request Dutch, British and American assistance in recovering the vessel. The attitude of the Admiralty was that "Any warship may take such action as it can to bring pirates to book, the only point is that it has to be answerable to the government whose flag the ship is flying if he can not substantiate the charges of piracy."

These seizures prior to *Achille Lauro* indicate the historical nature and scope of the problem associated with acts other than piracy. These may also show that terrorist goals may be economic, political as well as military. The success of the takeover will also trigger future seizures. These factors are not only important as a background but also crucial in providing clues on ways to prevent future attacks and to identify potential terrorists and their targets. The saga of *Achille Lauro* happened in 1985, when the Italian Liner was seized by PLO activist demanding release of prisoners from Israeli jails. Since the coming into force of the Geneva Convention On the High Seas, 1958 it has been widely accepted that so called political acts such as those by hijackers of *Achille Lauro* cannot constitute piracy *jure gentium*. In more recent times the attack on the day excursion ship *City of Poros* at Athens by Abu Nidal group in July 1988 and bomb explosion on *Our Lady of Mediatrix* in the



Philippines in February 2000 can be mentioned. These cases however differ from those cited earlier in the sense that both of them were short distance Passenger ferry and no effort to take control of these ships was made. The intention was pure instantaneous sabotage.

## **2.2 Reactions of international organizations**

The question of piracy and violence in shipping was first discussed in the League of Nations. It tried to define and codify the topic but disassociated true piracy from those arising out of political actions, which it called 'piracy by analogy' since they were not a danger to the shipping and commerce of all states indiscriminately. Even in the UN's 1958 Geneva Convention on the High Seas, to reach consensus, the customary law was not fully codified although the High Seas Convention states in its preamble to be desirous of codifying the customary law. UNCLOS III based on the previous High Seas Convention repeated verbatim the relevant articles.

In December 1985, after the *Achille Lauro* incident, the United Nations General Assembly called upon IMO "to study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures". In September 1986, the MSC approved MSC/Circ.443 on measures to prevent unlawful acts against passengers and crew on board ships, intended for application to passenger ships engaged on international voyages of 24 hours or more and the port facilities which service them. SUA Convention was also born out of this incident.

Besides intergovernmental efforts, industry too was busy in organizing their efforts to fight against crime at sea. The International Chamber of Commerce (ICC) established the International Maritime Bureau(IMB) as an anti-crime bureau in

1981. It quickly received the support of the International Maritime Organization in a resolution urging governments and law enforcement agencies to cooperate with the new body. The Comité Maritime International (CMI) has also been associated in this fight by way of spearheading the drafting of a Model National Law on Acts of Piracy and Maritime Violence, realizing the importance of uniform national law on this subject.

### 2.3 The Threat Perspective

“Maritime security”, according to some authors, in the military sense, can be defined as the protection of the homeland and the nation’s commerce from conventional sea borne military attack. This definition could be broadened to include security from any hostile force on the seas, be it military, pirate, or terrorist. Maritime security can also be thought of as the safety of life and property at sea, whether the threat be natural or manmade. It can also be considered from the law enforcement point of view, as in the case of drug trafficking at sea, which is a threat to the nation’s security. It could also be a reference to the protection of the natural marine environment. Finally, maritime security can be broadly defined in a national security context to include the protection of all of the country’s maritime interests.

Maritime borders are more porous and have lower security levels when compared to airports and land borders. Recent history shows us that, throughout the world, terrorists target transportation. There are numerous examples of attack against a transportation target. Marine transport is extremely vulnerable to terrorists’ acts. Such acts will have enormous direct and indirect consequences for a state, which is obliged to protect its vital interests.

### **2.3.1 Vital interests**

The vital interest of a coastal, flag and port state evolves from the dependence of this state on the activities associated with sea and shipping. Man's reliance on the sea has been an established fact that is not going to shrink in near future. Security threats critically impair these interests. According to Crickard (1995) these vital interests of a State can be summarized as

- Marine transport and trade;
- Resource development;
- Marine environment; and
- Marine security and sovereignty

### **2.3.2 Maritime transportation and trade**

International trade is the lifeblood of a country and most of it is moved by sea. The security threat could intensely be directed towards the transportation disruption directly or at the infrastructures supporting it. Containerization on one hand represents a proviso for a lean efficient and inexpensive movement of goods and the development in container transportation, handling and storage has been revolutionary, on the other side they also provide the greatest threat to a country due to unknown content. Such staggering volumes of cargo moving in containers have tremendous economic value, but they also pose significant risks to a nation's security. Unfortunately, the governments knows very little today about the contents of containers entering through their ports. Less than two percent is actually examined. We know even less about containers moving under bond to foreign trade zones or under a transshipment bond. Until a container formally "enters" the country, not much may be known about its contents. But its contents may pose a major

security threat the moment the container arrives in a port or makes it onto a highway. The USCG has also reacted to widespread fears that terrorists could deliver a nuclear device into the heart of the United States using one of tens of thousands of shipping containers that enter the country unchecked each day. "Millions of containers are used to ship goods worldwide... The potential for the use of these containers by terrorists for atrocious acts is very real," the USCG paper(2002) said.

"Containers can be used for the transport of weapons of mass destruction or, as has been recently experienced in a European port, for the transport of potential terrorists." It was referring to an Egyptian who was released without charge in November, having been discovered by Italian police in a Canada-bound shipping container (USCG, 2002).

Apart from containers the danger also looms from the attack against hazardous cargo, oil, chemicals and gas to the ship and facilities. At a seminar held recently in Tokyo by the Asia Pacific Energy Research Center, it was debated that the threat to Malacca Straits from hijacked gas carriers is real. The threat from a gas carrier streaming ahead for highly dangerous targets is potentially significant.

The cruise industry is yet another soft target for terrorists, and in terms of publicity and pressure tactics it presents excellent opportunities. Ten years ago, a cruise ship of 70,000 gross tons was the largest in the world. Today, we have an entire class of cruise ships that exceed 140,000 gross tons. These new mega-ships carry upwards of 5000 passengers and crewmembers. A successful terrorist attack on any one of these ships could result in a catastrophic number of casualties, and threaten the economic viability of the entire industry.

Piracy and armed robbery still remain a big concern for governments, shipowners and the crew in certain parts of the world even in modern parts. Regions of South

East Asia, South Asia, Africa, and South America are considered hot spot for pirates. According to Captain Mukndan (2000) of IMB “In today’s less violent context, the situation is serious. The evidence collected by the IMB Piracy Reporting Center in Kuala Lumpur indicates that since 1991 the number of incidents have risen. The level of violence involved, and the audacity of the pirates have increased significantly.” The following eight countries shared two third of the total number of incidents, i.e., 135 from a total of 202 reported attacks for the year.

Fig 2.1 Pirates Attack During 1998

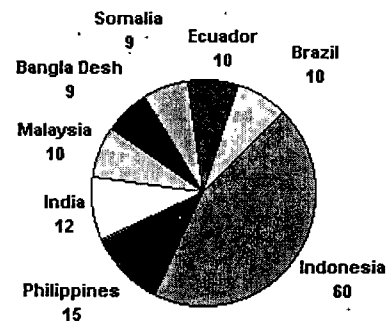
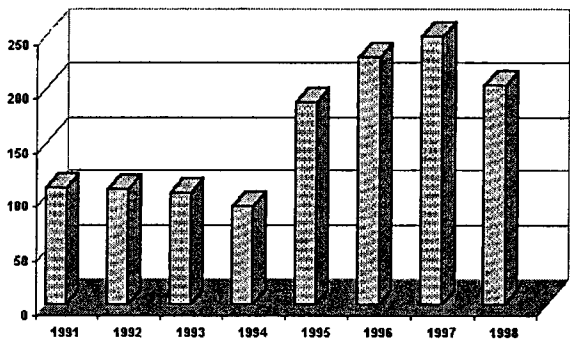


Fig2.2 Number of attacks between 1991 - 1998



Source International Maritime Bureau

### 2.3.3 Marine resources

*“Our Ocean is our last resource for food, water, energy and medicine. As our seas go, so do we.” Ian G. Koblick, 1982.*

The diversity of life in the oceans provides a natural "hope chest" for present and future generations. The ocean's biological diversity--the living resources that compose it and the ecological processes that sustain it--form a foundation for the quality of human life as well as the raw materials to enrich it. Living marine resources provide essential economic, environmental, aesthetic, and cultural benefits to humanity. A substantial harm to the economy and prosperity of country can be done by undertaking activities, which threaten these resources. Since the technology is still evolving for commercial exploitation of seabed minerals such as gas hydrates

and methane hydrates and also deep-sea oil exploration, probably in near future human activities will extend much beyond the imagination. Farther away from shore will bring in added security risks. Activities may range from attacking or colliding with offshore oil platforms to destructing living resources by intentional pollution. Millions of people depend upon fisheries alone.

#### **2.3.4 Marine environment**

Until recently, oceans have been regarded as dumping grounds of infinite capacity and as unlimited reservoirs of fishery resources. However, appreciation of the oceans as limited and alterable ecosystems, dependant on an intricate balance of living and physical processes, is now causing alarm. Our understanding is incomplete, with the result that dramatic incidents such as oil spills have received more attention than insidious sources of abuse that are potentially more harmful in the long term. Although environmental accidents, such as oil spills, account for only a small fraction of ocean pollution, they are important because most are readily preventable and their short-term effect can be devastating. A much greater volume of oil is spilled in routine tanker operations than in accidents, and most operational spills are avoidable. Preservation of marine environment has been a serious concern for all countries. Intentional pollution at very sensitive areas can do harm beyond imagination

#### **2.3.5 Marine security and sovereignty**

Like defending and protecting the land boundary, equal concerns for maritime boundaries arise for a country to maintain order and enforce jurisdiction. Maritime boundaries are a greater threat to illegal acts such as landing of illegal migrants, smuggling activities, drugs and arms peddling and other such criminal activities. This wide range of vital non-military and illegal act breach the security of a country and are detrimental to peace and economic prosperity within the state. Crimes affecting

security will both be organized and transnational in nature. Organized crime has increased in influence and scope over the last decade as organized criminal groups became increasingly entrenched in the international economy and as demand for and profits from the illicit transportation of people, drugs and contraband multiplied. Ackerman (1998) states that:

“We will see international criminal organizations increase in number and influence as they become more adept at manipulating and challenging local and national governments and international organizations and consolidating their power bases. The growth of transnational criminal organizations will be exacerbated by advances in communications and transportation technologies; a decrease in governmental controls over the international flow of goods, services and money; the establishment of international affiliations among immigrant communities; and the projected rates of unemployment in developing countries of the former Soviet States and Eastern Europe”.

Although there may be no direct military threat to a country from these activities today, the country's national security can still be threatened in the long run. While it is unlikely that any future challenge would rival the scale of the Second World War or that posed by the USSR during the Cold War, challenges will nevertheless occur, but from a much wider spectrum. According to Crickard (1995), at sea, country's security can be challenged in many ways, some traditional and some not, including:

- Threats and acts of violence to coerce or accomplish a political goal;
- Direct challenges to Countries sovereignty;
- Disregard of national or international law;
- Illegal resource exploitation;
- The illegal transportation of goods and people; and
- The deliberate or unintentional creation of an environmental hazard.

Not all these challenges are military in nature nor do all of them unnecessarily demand a military response. Each challenge has its own unique set of criteria that

need consideration in forming the appropriate response. The diversity of those threats is such that the focus today is on *security* rather than on *defence*. In the past, a country had traditionally defended against a specific threat rather than against imprecise challenges to national security. This approach is no longer valid for majority of states. New and more flexible concepts are needed. In addition to implying a broader scope of responsibility, *security* implies a choice because a country can select the level of security it maintains. In determining an appropriate security level, many factors come into play, including potential physical threats, geography, climate, ocean use, and the vulnerability of the marine environment. Together, these determine the amount of control a government may want to impose on the movement of maritime traffic. This requires the gathering, collation and evaluation of large amounts of data on ocean use to allow a government to be aware of changes and potential problems. By knowing what is happening in the waters under its jurisdiction, a government can respond to developing situations and take appropriate action. Thus, the ability to control what happens in its waters becomes an essential part in the process by which sovereignty and national security is enhanced and safeguarded.

#### **2.4    The trends within shipping industry**

The Shipping industry itself is going through a multitude of changes in technological, regulatory and economical front. These changes directly or indirectly affect the security and other related aspects. An understanding of the changes and factors bringing them about is essential to understand the threat shipping is exposed and in providing pointers for preventive actions.



#### **2.4.1 Expansion of world's fleet**

The world merchant fleet has expanded to 808.4 million deadweight tons (dwt) at the end of 2000, a 1.2 per cent increase. The fleet of oil tankers and dry bulk carriers, which together make up 70.1 per cent of the total world fleet, increased by 1.1 per cent and 2.0 per cent respectively. There was a 8.8 percent increase from 63.6 to 69.2 million dwt in the container ship fleet and a 6.9 per cent increase from 17.3 to 18.5 million dwt in the liquefied gas carriers fleet. World container port traffic continued to expand at a rate of 7.3 per cent over 1998, reaching 192.3 million TEUs. (UNCTAD, 2002) The growth in world trade is the engine that dictates the growth in demand and supply for shipping services. Although Bulk Carriers and Tankers dominate the industry, the growth of Container ships and Passenger an Ro-Ro ship is also note worthy.

#### **2.4.2 Size of Ships**

Keeping in line with economies of scale the size of ships have been growing. This is also partly attributed to terminal developments and technology in handling equipment. The size of container ships has reached in mega ship categories capable of carrying 5000 TEUs and above. All vessels of over 5000 TEU capacities are "post-panamax", that is their dimensions, either width or draft, are too great to allow transit through the Panama Canal. Thus their deployment is restricted to transpacific and Europe/Far East trades. Of the 113 vessels currently in service, 29 are deployed on dedicated transpacific services, 57 on dedicated Europe/Far East services and the remainder on various pendulum services covering both routes. Orders for ships with capacity up to 7500 TEUs is already on place.

Similarly the Cruise sector has witnessed a size revolution. Cruise ships capable of carrying 5000 passengers and crew are on delivery order.

Whilst the cruise fleet is relatively small in terms of the number of ships in the world fleet, the cruise fleet is much more important in terms of the number of persons employed on each ship. A crude estimate is that the 440 ships listed would employ in the order of 100,000 persons, and this excludes cruise ships only doing one day cruises. Tankers and Bulk carriers in terms of size have stabilized over the last decade.

#### **2.4.3 Deregulation of shipping – flagging out**

The transfer of ownership to Flags of Convenience was arguably the most important contributor to cost reduction. By moving the whole framework of ownership to flags set up for this specific purpose, a whole layer of costs was stripped away. Tax, employment regulations, company regulations, and disclosure were all removed (Stopford, 2000). In the 1970s and 1980s the range of registries available for this purpose was greatly widened and during the recession of the 1980s even the most conservative companies in bulk shipping opted for this cost saving device, with the result that it costs less to operate a VLCC today than it did 20 years ago. The tonnage registered under flags of convenience passed 200 million GT in 1994 and currently 48% of the world fleet is registered under these flags. By mid 2000, nearly 62 per cent (dwt) of the world merchant fleet (ships of 1,000 gt and over) was flagged out. Flagging out has also been instrumental mobilization of seafaring work force from developing countries. It has not only been a gain for the shipowners in terms of cheaper labor but has also benefited these countries.

#### **2.4.4 Regulation and control**

While the industry was vying for deregulation and more freedom, government authorities and international bodies, under pressure from the public, deliberated and brought about a host of regulatory regimes in matters related to safety, marine

environment protection, seafarers training and certification and overall management culture in managing ships. These efforts were reaction to various accidents and spills occurring in recent past. Amendments to SOLAS'74, MARLOP'73, STCW'78 and inclusion of ISM code in SOLAS are all evidence of these efforts. In the USA incident of *Exxon Valdez* brought up OPA'90. Last decade also saw a phenomenal rise in effective control being shifted from flag state jurisdiction to port state for curbing sub standard shipping. The regulatory control regime made a big difference and arrested the trends in accidents and spills

## **2.5 Forces and factors behind the threat**

Terrorism is practiced on a global scale in support of criminal business initiatives, various social issues, ethnic conflicts, religious interpretation, traditional political power struggles, and insurgencies. Combined, these factors bode ill for the future and demand the attention of countries. A variety of factors, many beyond the scope of the maritime arena, will have a substantial effect on maritime security in future. Most will be neither inherently stabilizing or destabilizing, but will encompass elements of each. Among these forces, of primary importance will be global economic change, international migration, and the growing importance of non-state actors, technological development, and the emergence of information operations (USCG, 1999). Most of these factors arise out of different background of the global society. Whether the source of violence is cultural, ideological, religious, economic, or state terrorism, the "us-them" dichotomy is "paramount in the thinking of terrorists" (Ivie, 2002). Division of the world along several axes plays a key role in determining the present.

### **2.5.1 Political, Social , Religious and Ethnical Factor**

Terrorism on its own terms is a politically motivated and systematic act of violence against civilians. As Bruce Hoffman (1998) explains, "*it is fundamentally and*

*inherently political. It is also ineluctably about power: the pursuit of power, the acquisition of power, and the use of power to achieve political change. Terrorism is thus violence – or, equally important, the threat of violence – used and directed in pursuit of, or in service of, a political aim, it is a planned, calculated, and indeed systematic”* Most of the terrorist acts have some or other political connotations. These political implications may arise within social, religious and ethnical causes or may encompass them to achieve their end. The terrorist activities round the world is living example of such consequences. Maritime security will not be untouched by these sources of violence.

### 2.5.2 Economical factors

The global economy will be one of the primary forces affecting activity in the international maritime environment through the future. *“The process of accelerating economic, technological, cultural and political integration; means that more and more we, as a nation, are affected by events beyond our borders. Outlaw states and ethnic conflicts threaten regional stability and economic progress in many important areas of the world. Weapons of mass destruction (WMD), terrorism, drug trafficking and organized crime are global concerns that transcend national borders.”* (The White House, A National Security Strategy for a New Century, Washington D.C. 1999).

The world is experimenting an ever-changing process, which requires nations and authorities of different levels to take control of such changes. This is emphasized by a rapid process of integration and an explosive increase of information technology, known as globalization. At its root, it is about the planet getting smaller and the free flow of people, goods, capital, and ideas across borders. The terrorist network at work today uses the technological tools of globalization, and they ignore the normal definitions of the nation-state. Furthermore, the extreme fundamentalists worry that unbridled globalization can exploit workers and replace ancient cultures. Terrorism is connected to the principles of globalization and the principles of anti-globalization.

Italian Prime Minister Silvio Berlusconi (2001) drew a direct connection between the terrorists and anti-globalization protestors: *"The terrorists were trying to stop the corrupting effect of Western civilization on the Islamic world, while the anti-globalization movement criticizes, from within Western civilization, the Western way of life, trying to make Western civilization feel guilty. That's why I see a singular coincidence between this action and the anti-globalization movement."*

Apart from globalization, the growing gap of economic conditions within the globe is also a main consideration for growth of terrorism. Poverty, hunger, famine, unemployment and poor living conditions are all leading causes to this problem. President Clinton(2001) subscribes this situation *"we have seen how abject poverty accelerates conflict, how it creates recruits for terrorists and those who incite ethnic and religious hatred, how it fuels a violent rejection of the economic and social order on which our future depends"*,

### **2.5.3 Demographical factors**

"In view of the imbalances in demographic trends between "have" and "have-not" societies, it seems unlikely that there will not be great waves of migration in the twenty-first century." *Paul Kennedy*

The global population will continue to increase, specially in the developing countries, although at a smaller rate than the current one. This will increase the demand for transportation of commodities and goods, accelerating the depletion of marine resources. The uneven growth of the developing countries will have implications in the migration towards the developed countries, considered as a national security concern for these nations. International migration, fueled by tremendous population increases in developing countries and uneven global economic growth, will be one of the most important factors affecting maritime

security. Furthermore, illegal migration via maritime means will be the most visible and problematic.

#### 2.5.4 Non state actors

The global community is and will be influenced by an increasing number of non-state actors and international organizations, having several interests. New multinational alliances and groups are formed with the purpose to face transnational crisis and cartels of transnational criminal organizations, which already are fitted with the highest technology causing the state to lose control of their operations. Thus, in the maritime illicit transportation, an increase in the illegal drug traffic and contraband, of species and people, is observed. Mass migrations in search for better living conditions and illegal activities will continue to spread throughout the traditional boundaries reaching maritime means.

#### 2.6 Vulnerability of shipping to acts of violence

Transportation is regarded as a very vulnerable target for terrorists for different reasons. A mobile unit due to its inherent limitations often is considered a soft object. There have been numerous attempts on transportation sector in recent past. Statistics below shows that number of attacks against transport targets are far more than rest.

Fig 2.3 Terrorist Attacks

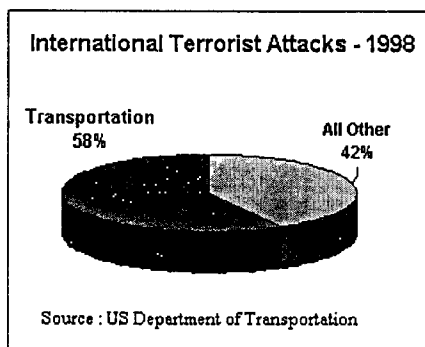
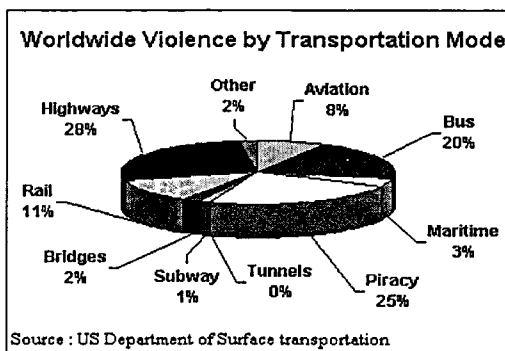
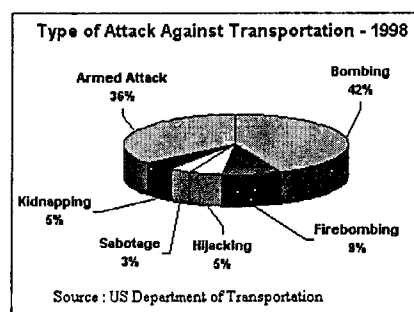


Fig 2.4 Violence on Transportation



Although the combined violence against the maritime industry within the transport sector is quite high, a major factor attributed to this is piracy. Apart from piracy the other form of violence against maritime industry is still quite low. Again looking at the figures for type of attack transportation is subjected to we find that armed attacks and bombing take a lead as compare to other forms of violence.

Fig 2.5 Types of Attacks on Transportation



Air transport being most critical and sensitive, is best guarded worldwide against terrorism and other criminal activities. Also being a much smaller industry than maritime it is more effectively regulated and controlled. Although the terrorist attacks have been less in case of shipping as compared to other modes of transportation, exposure of shipping to this evil act in the present time to a larger extent can not be ruled out due to array of factors such as

- Ships mobility around the world : Ships can be easily taken to any part of the world and unlike airplanes, they can sustain on their own for a considerable period. Also land approach can be made at even isolated places without raising suspicions. In a successful takeover it may take considerable amount of time before the knowledge of attack is recognized.
- Non-uniformity in port- ship interfaces : The security related aspects of this interface is almost negligible at most of the places. It makes the job of a criminal much more easier. Different countries have diverse requirements.
- Size , speed and accessibility : The size of the ship, its slow speed and easy reach make it an attractive target. Moreover it is difficult to secure the ship against perpetrators as there are so many operational constraints to it.

Moreover ship not only present itself as a lucrative in the port and harbor but also in high sea. The spate of robberies and piracy has proved this.

- Ill equipped, manned and planned: Ships have no equipments to defend themselves against armed attack. The manning level is going down despite increase in size and proper watch and look out for these elements by crew themselves is getting impossible. Plans for such an event is so far not available. Training of crew to handle these situations is negligible.
- Valuable and hazardous cargo in large quantity : Apart from being valuable and attractive as a catch to the criminals the cargo such as oil, chemicals, gas and other hazardous substance are also potentially capable to cause large scale damage and destruction.
- Lack of effective jurisdiction over high sea : Due to lack of national laws in many countries there is a gap in legal regime over such incidences outside the territory of a state.
- Inadequate cargo inspections : The vast amount of cargo which is being moved by ship makes it impossible to inspect each and every shipment. Criminals take advantage of such complications.
- Air targets are becoming more difficult : After the September attack airlines and airports all over have tightened the security network considerably. Closure of that option will lead them to think for other means and shipping offers them the alternative.



## **CHAPTER III**

### **Legal Issues: International and National**

#### **3.1 Background**

Birnie (1987) wrote that "*The growth period of ancient crime at sea, 'Piracy' coincided with the emergence of the jurisdictional basis of the law of the sea, which was founded on a simple division of the seas into a narrow belt of territorial sea over which the coastal state exercised sovereignty and, therefore, exclusive jurisdiction, and the high seas, the area beyond, in which the doctrine of the freedom of the seas prevailed.*" This doctrine was based on the economic necessity of maintaining freedom of navigation to enable the development of trade with the New World and protecting the interests of such fishermen as wished to venture into distant waters. Piracy had to be stamped out on the high seas to preserve these freedoms which were then perceived as being to the advantage of the whole international community.

The basis of the international law establishing piracy *jure gentium* was to protect community interests in economic development and humanitarian standards. Further the piracy was codified in the international law by 1958 Geneva Convention on the High Seas and the 1982 UN Law of the Sea Convention. The definitions adopted therein are, however, narrow ones, not consonant with all states' laws, and have been expressed in somewhat ambiguous terms.

The points emerging from above descriptions are that in majority of case where seizure or other acts of violence emanated against shipping the usual response of Governments was to fall back on proving these cases as an act of piracy, as this act was defined, codified and jurisdictions of states were established, even being surrounded by controversies. As in the Geneva Convention on the High Seas

[Article 15(1a)], piracy thus remains circumscribed by geographic limitation, made worse by the fact that the 1982 Convention permits a 12-mile breadth for the territorial sea. Extension of territorial Sea up to 24 NM as contiguous zone and further till 200NM as the exclusive economic zone does not give states jurisdictional right to include piracy and other forms of violence into its national laws. The situation is further complicated by inclusion of piracy provisions in Part VI of the UNCLOS, relating to the high seas. The extension of territorial seas and the creation of contiguous zones and EEZ's have eroded a vast area from the domain of high seas. In recent times a fraction of violence incidents can be regarded as piracy based on geographical definitions.

The problem this situation presents, as the offences mostly occur within areas of national jurisdiction (disregarding the existence of an EEZ), outside the scope of the universal jurisdiction accorded under piracy *jure gentium* as presently conceived, is one of ensuring that appropriate national laws exist and that they are enforced. It will be observed that the problem countries are all developing states with large offshore areas. The provision of outside practical or financial aid to improve enforcement would appear to provide the best response in such cases. Although extending the scope of piracy *jure gentium* to encompass at least the territorial sea would also be advantageous, it seems unlikely that coastal states will accept this since they would regard it as an invasion of their sovereignty. States could accept help in enforcement from other states' coastguard or naval vessels by concluding bilateral agreements, as some Caribbean countries have done with the USA

### **3.2 Terrorist acts and international treaties**

At the conclusion of the United Nations' October 2001 Plenary Meetings on Measures to Eliminate International Terrorism, the President of the U.N. General Assembly stated that the "*primary task facing the international community at present is to ensure that an effective legal framework for the prevention and elimination of*

*international terrorism is in place.” These sentiments were echoed by Estonia’s Minister for Foreign Affairs, Toomas Hendrik Ilves (2001), who declared at a subsequent meeting of the General Assembly that “The destruction and elimination of terrorist networks is a time-consuming task, for which there are no instant solutions. The United Nations does, however, have effective measures at its disposal to fight terrorism—international conventions and sanctions that can be applied to hamper terrorist activities.”*

For over 30 years the UN has worked through treaties and resolutions to eliminate the threat of terrorism. There are 12 treaties currently in place that form the basis from which many non-military actions are being undertaken. Two new conventions on terrorism are presently being considered that will address the theft of nuclear weapons and provide an overarching structure for addressing terrorism.

### **3.2.1 United Nations conventions against terrorism**

The UN has been working on the elimination of terrorism since the first airline hijackings of the 1960's and 70's. In all, the Organization has worked on the 12 conventions, most of which have been ratified and adopted. Although these 12 treaties do qualify as international law against terrorism, in fact, the number of treaties that are actually devoted to counter terrorism are four, as identified by the UN, as anti-terrorism treaties. These treaties are: the "Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, 1973"; the "International Convention Against the Taking of Hostages, 1979"; the "International Convention for the Suppression Terrorist Bombings 1997"; and the "International Convention for the Suppression of the Financing of Terrorism 1999."

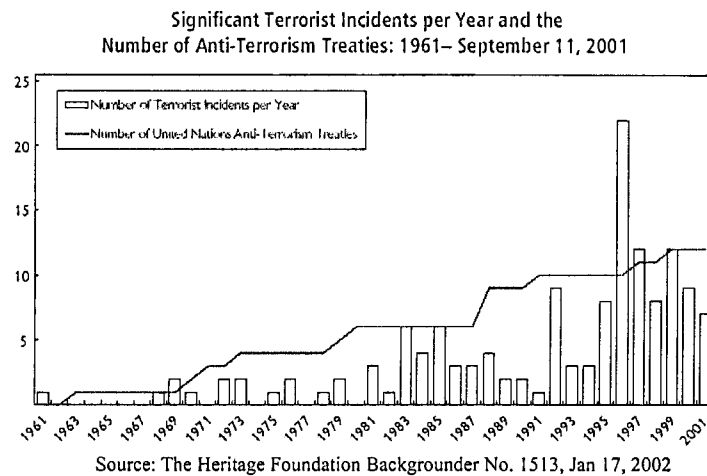
### **3.2.3 Regional conventions**

There are also seven regional conventions on terrorism: the Arab Convention on the Suppression of Terrorism, 1998, deposited with the Secretary-General of the League of Arab States; Convention of the Organization of the Islamic Conference on Combating International Terrorism, 1999, deposited with the Secretary-General of the Organization of the Islamic Conference; European Convention on the Suppression of Terrorism, 1977, deposited with the Secretary-General of the Council of Europe; OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that Are of International Significance, 1971, deposited with the Secretary-General of the Organization of American States; OAU Convention on the Prevention and Combating of Terrorism, 1999, deposited with the General Secretariat of the Organization of African Unity; SAARC Regional Convention on Suppression of Terrorism, 1987, deposited with the Secretary-General of the South Asian Association for Regional Cooperation; and Treaty on Cooperation Among States Members of the Commonwealth of Independent States in Combating Terrorism, 1999, deposited with the Secretariat of the Commonwealth of Independent States.

### **3.2.4 Growth and effectiveness of international treaties**

The growth of anti terrorism treaties within international sphere has been substantial, in so far as they have multiplied during last four decades, still the experience indicates clearly that there is clear lack of faith in the potency of legal treaties and conferences. From 1981 to 2000, there were a total of 9,179 international terrorist attacks (excluding intra-Palestinian violence), averaging at 459 attacks a year. That these accords have had no substantial impact is underscored by the striking fact that all seven of the state sponsors of terrorism identified by the United States Department of State are signatories or state parties to one or more of these 12 treaties or conventions.

Fig 3.1 Significant Terrorist Incidents



The analysis shows there are some obvious weakness in International Legal system leading to failure in supressing or the acts. Some writers have even questioned the role of International law in fighting terrorism. According to Talbot (2000):

If there are so many weaknesses in the current international law on terrorism, can international law actually be of any use in counter-terrorism? The main weakness in the treaties on terrorism is not dissimilar to all weaknesses of international treaties; who enforces compliance? Added to this problem is the immense political tone in terrorism and the variety of forms and motivations that are exacerbated in the maze of international politics. This continual intrusion of crime into politics and its contingent criticism of the situation that has lead to the violence is a disincentive for some states to act together.

Apart from this 'immense political tone' which has even deluded UN to reach on a definition of terrorism, the other weaknesses are identified as signatory states can refuse to act on a number of grounds which extends from racial/religious discriminations to the arguments that compliance with the request would cause prejudice to that person's position for any of these reasons. The reactive and punitive nature of these treaties have also come under severe criticism. As all of these Conventions do not primarily deal with the prevention or suppression of the

alleged terrorist acts, rather deal primarily with the apprehension, conviction and punishment of those who commit acts a sort of “after the event” treaties. But there are preventive elements in some of the treaties.

### 3.3 Terrorism at sea and the Law of the Sea

According to Pinto (1992), *“The 1982 UN Convention on the Law of the Sea deals essentially with management of the living and non-living resources of the sea, but has provisions that have important implications for maritime security.”*

UNCLOS has codified the legal regime governing virtually every aspect in, over or under the seas. It has contributed significantly to the building of a stable maritime regime in different areas. It provides for jurisdictional division of the sea for the coastal states to take effective control of the respective areas in terms of legislation and implementation. As one moves away from the coast the effective control diminishes, hence the states have varying degree of authority ranging from full sovereignty in internal and territorial waters to almost vanished authority in high seas. The legal jurisdiction of a coastal state, in cases of maritime violence other than piracy, are summarized in the following subsections.

#### 3.3.1 Internal and Territorial Waters

Internal waters are under full state sovereignty and the coastal state can enforce its jurisdiction as if the unlawful acts were committed in its territory. Hence the state can take action against ships navigating in internal waters and involved in terrorist activities in the same manner it would deal such activities on land. Such activities would, therefore, be covered under provisions of national criminal acts or in presence of a specific terrorist legislation under that. Territorial waters are also under the coastal state's sovereignty but, state jurisdiction is limited, however, by the right of innocent passage for foreign vessels. If the foreign vessel is threatening the

security of the coastal state, having terrorists on board and involving in terrorist activities in the territory of the coastal state. In this case, there is no doubt that the coastal state can resort to proper police action. But if the same vessel arriving from the high seas, is not immediately threatening the coastal state, and is traversing the territorial sea in lateral passage the act would not be breach of innocent passage even if it aims at waging terrorist activities in a third country, and since Article 19(2) of the 1982 Law of the Sea Convention requires that the activity prejudicial to the coastal State be committed in its territorial waters. As per Ronzitti (1990)

“ In this case the rule to be applied is that on criminal jurisdiction on board a foreign ship, embodied both in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone and in the 1982 Law of the Sea Convention. If the crime has been committed before the entry of the ship into the territorial sea, the coastal State is not allowed to arrest the vessel in order to exercise its criminal jurisdiction, unless a request to do so has been made by the flag State.”

### **3.3.2 Contiguous zone**

The provisions on the contiguous zone do not confer any special right on the coastal State to take enforcement measures against maritime terrorism. While Law of the Sea Convention allows the coastal state to take action against foreign vessels in order to 'prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea'. Security is not mentioned. Therefore enforcement jurisdiction can be taken only if a terrorist activity also amounts to an infringement of customs or immigration rules of the Coastal State. On other situations rules of high sea will be applicable in this zone. If this zone is not

### **3.3.3 The exclusive economic zone**

The exclusive economic zone extends from the coastline to a limit of 200 nautical miles, in which the coastal state has sovereign rights to explore, evaluate and exploit

the living and non-living natural resources of the sea, seabed and subsoil. In return it has duties, obligations and responsibilities in the areas of administration, law enforcement and environmental management. However the law enforcement jurisdiction does not extend to security aspects. State is entitled to take action against foreign vessels to protect marine environment. Thus if the terrorist act is going to cause pollution or has caused pollution state has legal rights to prosecute the wrongdoer. However, a state to protect its interests, can take actions against the perpetrators if such actions are directed towards its artificial islands, fixed platforms and pipeline lying in EEZ. For other cases involving foreign ships, and in case of coastal state not claiming EEZ, the rules of the High Sea will be applicable.

#### 3.3.4 The High Seas

No State may validly purport to subject any part of the high seas to its sovereignty. No territorial jurisdiction is enjoyed on the high seas, thus explaining the presumption of the exclusivity of flag State jurisdiction which operates there. However, intervention by other state is possible in cases of piracy and slavery as per provisions of UNCLOS. Intervention by flag state in cases of a terrorist act has to be aimed not at punishing terrorists but at rescuing human beings. This means that the flag State has the power to choose the tactic it considers most appropriate to cope with the situation; however, as its intervention is aimed at rescuing human life, an action which would not result in the rescue of hostages but only in unnecessary massacre would be of a doubtful legality.(Ronzitti, 1990).

In cases of request by another interested state to intervene, the flag state may give its consent. It is also recognized that if the foreign states personals are endangered , such requests must be consented. For example in case of *Achille Lauro* there were passengers from USA and UK. Both these states were preparing to intervene after taking permission from Italy(flag state). Ronzitti is of view that intervention by a



state whose nationals are held as hostage even without consent from the flag state can not be held as case of aggression as it is only a minor variation of Article 2(4) of UN Charter.

### 3.4 The Rome Convention

The 1988 Rome Convention arose as a direct response to the one well-known maritime terrorist action - the 1985 *Achille Lauro* incident. In November 1986 the Governments of Austria, Egypt and Italy proposed that IMO prepare a convention on the subject of unlawful acts against the safety of maritime navigation and submitted a draft proposed convention, which would aim to fill the gap in the present system regarding the suppression of such acts. The proposed convention would provide for a comprehensive suppression of unlawful acts committed against the safety of maritime navigation which endanger innocent human lives, jeopardize the safety of persons and property, seriously affect the operation of maritime services and thus are of grave concern to the international community as a whole.

As a result, in March 1988, a conference in Rome adopted the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA). It includes provisions for the absolute and unconditional application of the principle either to punish or to extradite persons who commit or who are alleged to have committed offences specified in the convention. A protocol extends the provisions of the convention to unlawful acts against fixed platforms located on the Continental Shelf (Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988). The two instruments both entered into force on 1 March 1992.

The main purpose of the SUA treaties is to ensure that appropriate action is taken against persons committing unlawful acts against ships (and fixed platforms on the continental Shelf), which include the seizure of ships by force, acts of violence

against persons on board ships, and the placing of devices on board a ship which are likely to destroy or damage it. The treaties oblige Contracting Governments either to extradite or prosecute alleged offenders. As of June 2002 there are 70 states signatory to this convention and 63 to the protocol.

The convention itself has been described as a lawyer's convention. According to McDorman (2002):

For better or worse, the 1988 Rome Convention is primarily a lawyer's document since it deals with: (i) the creation of criminal offences in national laws, (ii) the exercise by states of national criminal jurisdiction over alleged terrorists/offenders and (iii) with extradition of alleged offenders/terrorists. The Convention does not, per se, make terrorist acts at sea a breach of international law rather it sets out a series of "offences" (not using the term terrorism) for which states are obliged to ensure are part of their criminal law as offences, and it requires states a party to the Convention, where an alleged offender is in their territory, to either seek to prosecute the person under national criminal law or, on request, to extradite the person to another state.

These perception are also shared by Treves(1990), who while describing this convention says:

The Rome Convention does not try to include unlawful acts against the safety of maritime navigation within the notion of international piracy. It instead follows the 'sectorial' approach to the fight against international terrorism adopted in a number of multilateral conventions such as those for combating unlawful acts against the safety of air navigation, against internationally protected persons and against the taking of hostages.

The 'sectorial' approach as taken in a dozen of UN convention entail that they predominantly deal with specific sectoral aspects such as hijacking, hostage taking, bombing, etc. What these Conventions aim at is to define the specific act, criminalize it internationally, and develop a regime to prosecute or extradite the perpetrators. The

Convention on the Suppression of Financing of Terrorism concluded in 2000 is a particularly different Convention, as it is cross sectoral, and deals with a critical but difficult aspect. The UN is currently working on a Comprehensive Convention on International Terrorism (CCIT), as proposed by India in 1996. The Indian initiative on CCIT is meant to plug gaps in the existing sectoral conventions; to target countries, which provide support and safe havens; and to deal with terrorist acts, which are multi-dimensional. The draft covers violence by any means or any device; includes damage to property, installations and communication facilities, apart from loss of life and injuries inflicted by terrorist act. If at all, the CCIT happens to come in force what will happen to these sectoral convention, remains to be seen as there will be many overlaps. However, the importance and efficacy of existing conventions can not be entirely denounced.

#### **3.4.1 Structure and distinct features of SUA Convention**

The SUA treaties were the first anti-terrorist instruments to be adopted specifically dealing with international shipping. The model on which SUA Convention was based is yet another sectoral anti terrorism law dealing with air terrorism<sup>1</sup>. “Prosecute or extradite” is at the heart of the 1988 Rome Convention, and it creates an obligation on each state a party to the Convention in which an alleged offender is found to either extradite the offender to a state which has “jurisdiction” or to seek to prosecute the offender under its national laws. However, the decision to prosecute is discretionary vested with national authorities. It obliges the states to make the specific offences enlisted in the convention illegal and punishable. To make the scope of the convention as wide as possible, it is applicable to all ships as defined, irrespective of their location so long as they are in an international voyage. As

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<sup>1</sup> Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (1971)

summarized by Treves (1990) *"The general idea was to consider as included in the scope of the Convention any ship that, while becoming the target of one of the offences considered, is engaged in an international voyage."*

The ship is included in the scope of the convention independently of its being in internal waters, in the territorial sea or beyond the territorial sea, provided that it is coming from, or is directed to, a point outside the territorial sea of a single State. Besides describing the offences the convention provides that various categories of states, having some connection with the crime, have the obligation to establish jurisdiction. It also requires that these offences to be made punishable and finally it obliges the states to extradite perpetrators hindering in their state and to hand them to the state which has established jurisdiction. Provision for cooperation complement these rules. There are, however, some limitations within the conventions. The problems of acts committed by the governments and by National Liberation Movements has been left out to be governed by General International Law<sup>2</sup>. Another important limitation of the SUA Convention, implied by article 4(1), is that it does not apply to offences committed during cabotage operations taking place exclusively within the territorial sea of a coastal State. For instance, apart from the exceptional situation covered by article 4(2), no country would be able to establish jurisdiction (in order to claim extradition) in accordance with article 6(2) in respect of offences against its nationals during a cruise covering islands within the territory of the flag State.

### **3.4.2 Need for amending SUA Convention**

IMO Secretary-General Mr. William A. O Neil, at the opening of the Legal Committee, 84<sup>th</sup> session, suggested the need to review the measures already adopted

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<sup>2</sup> The Last but one paragraph in the preamble of the Convention affirms this

by IMO to combat acts of violence and crime at sea by stating "*Apart from any possible revision of practical preventative measures advocated by IMO, it is also important to ensure that criminals who have perpetrated acts of violence at sea be properly brought to trial and punished.*" The views of Secretary General were further supported by adoption of Resolution A. 924(22), unanimously by international community which recognized the need for review of existing measures and requested Legal Committee to ascertain whether there is need to review and update the existing instruments. At the U.S. and Turkey's initiatives<sup>3</sup> the committee established an SUA correspondence group under the leadership of the United States to consider amendments, such as broadening the list of offenses to include using harmful substances (biological agents, toxic chemicals) to harm persons and using the ship or its cargo as a weapon. The terms of reference of this group reflects the discussion that the correspondence group shall review and then propose necessary amendments for the *SUA Convention* and *Protocol* to facilitate, strengthen, and expand international cooperation and coordination as a means of combating unlawful acts, including terrorist acts.<sup>4</sup>

Apart from all the shortcomings of the convention, its usefulness as a potential weapon against terrorist and other violent acts against ships and platforms can not be diluted. As Menefee (1999) point out "*The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 may not be an entirely appropriate mechanism in investigating and prosecuting all crimes at sea. However, even if one disagrees with an international document to consider its premises and use, these is a basis for measuring and possibly revising municipal law*" This view is also shared by Beckman (1999) "*Majority of so called Pirate acts against ships, technically will fall under other forms of maritime violence rather than*

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<sup>3</sup> See IMO Docs LEG 84/6, LEG/84/6/1 and LEG/84/6/2

<sup>4</sup> The Legal Committee charged the SUA correspondence group to work intersessionally and report to LEG 85, with the long term goal of recommending to the next IMO Assembly, tentatively scheduled for November 2003, the scheduling of a diplomatic conference to amend the *SUA Convention* and *Protocol*

*Piracy, and this convention will certainly provide another weapon for dealing with such offenders”.*

### 3.5 The states obligation

While states rights, jurisdictions and obligation to prosecute in cases of maritime violence have been to a larger extend expressed in international conventions, their obligations to protect and respond in such situations are still unclear. There is no doubt as to the primary responsibility of protecting the ships lies with flag state, but the limitation of flag state, in cases of security issues, makes it necessary for the obligation to be shared with coastal in whose jurisdiction and water the ship is. Equally important is the issue of obligation to be shared with other interested states such as crew nationality state. As explained by Gaza (1990)

International conventions concerning terrorist acts' do not specify the conduct that contracting States should take when those acts occur, in particular when terrorists take people as hostages. Although this point has often been perceived as crucial, no doubt it has proved difficult to find a generally acceptable definition of a specific rule of conduct. Thus, the question of measures to be taken before terrorist acts are completed has been either ignored or dealt with in provisions having a wider scope and using unspecific language.

Even in cases of piracy under the customary law and Conventional Law (UNCLOS), while the jurisdiction has been specified as universal, the obligations on the states to repress is defined to somewhat lesser extend. Art 100 of UNCLOS, 1982 (Duty to cooperate in the repression of piracy) states “*All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.*” The repression of piracy by states goes as far as cooperating with other states.

In Rome Convention the obligation is spelt out in Article 13 (1) “*States Parties shall co-operate in the prevention of the offences set forth in article 3, particularly by:*

*(a) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories;*

*(b) exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 3. “*

Although none of the provisions expressly requires contracting states to combat violent acts, the conventions state an obligation both to take preventive measures and prosecution or extradition measures. What about obligation to respond in such situations... is it implied? So far as these obligations are not clearly defined the national policy will have to be based on its political will and physical capabilities. However, Judge Yamamoto (2001) considers that coastal states have an obligation to provide safe and secure passage to ships having a right of innocent passage:

“In my view, all that other countries are legally allowed to do is to provide mutual assistance in investigation or provide judicial cooperation, if so requested by the coastal state on whose waters piracy has been committed. So, we should consider whether or not the coastal state bears the responsibility for preventing the occurrence of piracy or armed robbery. It is the coastal state’s duty to guarantee the right of innocent passage of ships of foreign countries. Coastal countries must give some serious thought to how to foresee and prevent dangers to navigation.”

### **3.6 Legal rights to maritime interdiction**

The issues related to maritime interdiction discussed here concerns to peacetime exclusion activities on the high seas, carried out to protect the country from security threats such as drugs, arms, illegal migrants and weapons of mass destruction. The

legal jurisdiction to interdict foreign ships for nations security is surrounded by controversies. From time of *Virginus*<sup>5</sup> through Algerian war and during the current situation, the issue has been raised by different jurists with different opinions. The 1958 Geneva Convention (Art 22), and UNCLOS, 1982 (Art 110) do provide certain exceptional situations in which warships can be justified in boarding foreign merchant ships on the high seas which include Piracy, Slave Trade, Unauthorized broadcasting, ships without nationality, and on grounds of refusal to show the flag show.

The question that is raised for many years is based on country's right to self-preservation and self defence as against the freedom of navigation and rights of flag state. Speaking on proposed US actions to search suspicious foreign vessels anywhere in the world, Nelson (2002) says "These proposals raise a question which has been for a long time a source of much controversy in the international law of the sea. ..Can a State in time of peace take enforcement measures on the high seas against a ship flying a foreign flag which it suspects of being engaged in activities endangering its security?"

Although UN Charter and Security Council Resolutions<sup>6</sup> reaffirm the inherent right of individual or collective self-defence against threats, the legality of these resolutions are not clear. A bilateral treaty solves these issue to a large extend. The need and right of a state in present scenario can best be summed up in Nelsons (2002) words "*At this stage in the fight against terrorism the threat posed by Al-Qaeda terrorists is still real. It seems to me therefore that in these particularly exceptional circumstances self-defence as adumbrated in the "rule of Virginus" continued to be valid legal ground on which these maritime interdiction operations may be based.*"

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<sup>5</sup>Virginus an American flagged ship was captured on the high seas by Spanish Navy in 1873 on self defence grounds arguing that self defence took precedence on right of free navigation. America took the view that Spain did not have any right to capture their ship in time of peace.

<sup>6</sup> UN Security Council resolution No 1368 and 1373



### 3.7 National legal regime

The importance and relevance of appropriate national legislation for combating terrorism and violence at sea cannot be disregarded. Rather due to the idiosyncrasy of international terrorism, there is ongoing, never-ending debate as to what can and what cannot be included within its dimension under international law. In such a situation a state must establish effective jurisdiction and control over all aspects of maritime terrorism and violence to safeguard its interests and to bring the criminals to justice.

Every state can, even if it is not bound to, promulgate its own laws on maritime security and terrorism applicable to its territory, people and ships. These may conform to international laws but again not necessarily all the way. In the end the specific country has to legislate the law keeping in view the threat perspective. The municipal laws can complement the international conventions within the national jurisdiction. Moreover since there are no sanctions prescribed in the international law, it is left to domestic legislation to prescribe them. The multilateral response to terrorism has been responsible for ignorance of domestic laws in most of the countries. Menefee (1998) wrote, "*A third complication is the international fallacy, which holds that any solution to the crime at sea must necessarily involve a multilateral response. This is not to say that international cooperation has no role to play, but rather, that by overemphasizing its effect, we put the cart before the horse.*"

When it comes to crime and terrorism at sea, the key is at the national level, which goes with comprehensive legal formulation. It is understood that many countries do not have national legislation for dealing with crime at sea. Therefore there is an urgent need for the governments to ensure that their national legislation deals with these crimes and related offences.

To avoid gaps, initiatives have to be taken for ensuring that interests are adequately protected. Questions of overlapping jurisdiction can always be resolved, but a lack of jurisdiction cannot be retroactively remedied. This core of the matter lies in reviewing national legislation in accordance with national interests, not the least because these initiatives may provide further insights. The importance of these national initiatives lies not only in their discrete municipal impact, but also in their awareness of the interests and concerns of other nations, and the cumulative effect such changes may have in the fight against maritime crime.

It was also noted that the absence of legislation and expeditious and efficient enforcement may discourage the victims from reporting crime and violent attacks to the authorities. At present the laws in many countries treat maritime crime under the Penal Code. Inadequacy of national system may manifest into legal inability to effectively prosecute and extradite the accused in different incidents, as was amply illustrated in the case of *Alondra Rainbow*<sup>7</sup>. The case demonstrated the urgent need for the governments to ensure that their national legislation deals with piracy and related offences. It would also be ideal if the governments that were not signatory to the 1998 SUA Convention consider ratifying this Convention.

While filling the cracks with national legislation is one side of the coin, the other side presents the problems related to an industry with high degree of internationality, requiring uniformity and harmonization throughout. Terence Taylor(2002), President and executive director of the International Institute for Strategic Studies - US emphasized more on development of international criminal law, he says *"I don't think there is a gap between international criminal law and national criminal law,*

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<sup>7</sup> The Indian law enforcement had placed the 15 pirates in custody and had declared its intention to prosecute them. However, although India is a signatory to the United Nations Convention on the Law of the Sea (UNCLOS) 1982 this has not been incorporated into the national legislation. The Indian Penal Code does not address the offence of piracy or hijacking of ships. Further, India became a signatory to the Convention for the suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988 SUA Convention) on 15 October 1999. However, the accession to this Convention came into effect on 15 January 2000, whilst the alleged offenders were arrested on 21 November 1999.

*the problem lies defining which applies when. In certain conflicts we are witnessing right now, both apply. There has to be a clear understanding as to which applies where and to whom. But I think the law has to be developed further, especially international criminal law related to terrorism.”*

Proposed changes in national legislation took a step toward increased *international* influence through the 1998 formation of a CMI group dealing with the problem of piracy and armed robbery aboard ships. This Joint International Working Group on Uniformity of the Law of Piracy, has considered ways in which municipal laws can be revised to emphasize shared values in the fight against piracy providing a 21st century basis for state-centered solutions of this problem.

The Model ~~N~~ational Law offers a way to address some of the problems faced by countries in implementing anti piracy and terrorist laws. Without mandating *form*, it provides a *checklist* for any capitalized state law dealing with maritime crimes of violence. To the degree that nations, accept all or part of this framework, greater international uniformity will be achieved in the treatment of marine marauders. In dealing with conduct which “crosses the line”, it is essential to have in place a series of nationally recognized enactments. *Linked* through the operation of the Model National Law, these may, ironically, finally usher in consistent *global* treatment of piracy and maritime violence. (Menefee, 1998)

### 3.8 Different national legal regimes

The legislator has a number of options for translating grave terrorism offences into national penal legislation and for making the criminal acts in constituting them subject to domestic law. More particularly, they include:

- a) The application of the existing criminal law of the country concerned (the so-called system of "double criminalisation");

- b) General criminalisation under specific domestic law by reference to the relevant provisions of international law with the establishment of a range of penalties;
- c) Specific criminalisation of the offences laid down in the international treaties, whether by adopting the wording of the Conventions;
- d) A combination of the preceding options (in various forms).

The first option takes the view that the penal code already in force provides adequate punishment for acts which constitute a serious breach of international criminal law and that it would be superfluous, therefore, to make them a specific offence. As international law takes precedence over national law, domestic legislation must be interpreted in accordance with the provisions of international law by which the State is bound and any gaps in the law must be closed. If a state which follows this option it has to comply fully with its obligations under the conventions. The second alternative is of the view that offences and other breaches of international law may be criminalized in specific domestic law (for instance Merchant Shipping Act), by incorporating a clause cross-referring to the relevant provisions of international law, or conventions and at the same time, laying down a range of penalties. Specific criminalization of each offence is yet another way to incorporate international treaties related to crime, but the process for legislator is too cumbersome. Lastly the national system can be based upon a combination of two of the approaches. In the end it is to be decided by the state and its legislators as to which path they select. A cautious approach is required which, while providing jurisdiction and substantial deterrence, does not overstep into human rights violation. A majority of specific legislations against terrorism are criticized on this account.

During the preparation of the Model National Law for acts of Piracy and Maritime Violence, by CMI, a joint international working group was set up. In the course of its deliberations the Group posed a detailed questionnaire in 1999 and a brief

supplementary questionnaire in 2000 to the Comité's Member National Associations of Maritime Law. The questionnaire expected the member countries to respond as to the current national legal system in their countries in fighting crime against shipping. The response was, however quite lukewarm and only a handful of countries responded.

Based on the response from the questionnaire the domestic system in some of the country can be described. In United Kingdom the SUA Convention has been incorporated in the Aviation and Maritime Security Act 1990, where Part II deals with the maritime aspect. This act has been amended in 1999 by Merchant Shipping Security Act. New Zealand has also implemented the convention through Maritime Crimes Act 1999, although not exactly in line with the convention. Australia covers the Convention under the Crimes (Ship and Fixed Platforms) Act 1992 No. 173 of 1992, which generally hews closer to the IMO Convention, but still shows occasional deviations. The Japanese Maritime Law Association claims that the IMO Convention provisions apply nationally although no special law was enacted, through their criminal code. This states that this Law shall also apply to every person who has committed outside Japanese territory those crimes noted in Book II which are considered to be punishable by a treaty even if committed outside Japanese territory. On other occasions national laws are not so closely based on the 1988 Convention., Argentine Criminal Code for example, is directed against anyone who, by means of violence, undue influence or deceit, usurps the activity of a vessel or aircraft with the aim of taking possession thereof or of disrupting of the things or persons carried therein. This may be constructively contrasted with the "force or threat thereof or any other form of intimidation" referred to in the IMO treaty. The Argentine example, it will be seen, could be judged *superior*, in that it could cover such situations as the hijack of a vessel by a bogus pilot. Both Portugal and Norway have code provisions that are *wider* than the convention.

Although USA had substantial anti-terrorist measures already in place, it was recognized that further legislation was needed to deal more effectively with the global threat of maritime terrorism. Presently multiple Maritime Security Legislations are under consideration of the legislator. They include "*Homeland Security Act, 2001; Maritime Transportation and Antiterrorism Act, 2002* and *Port and Maritime Security Act, 2001* These bills proposes sweeping changes in the Merchant Marine Act, 1936. These legislations are aimed at providing establishment of jurisdiction, extension of seaward limit from 3 NM to 12 NM, extended authority to the Coast Guard and Secretary of Transport, provision of AIS, crew verification, prior information of arrival etc. However, It is feared that this legislation would create a gap between IMO rules and US domestic rules. European Commission and Japan have voiced their concern regarding issues related to port security assessment, provisions of Automatic Identification System, Owners responsibility for ensuring the availability of anti-terror measures, etc.

While some countries have highly developed legal system to deal with maritime violence, others rely on their criminal or penal legislation and there is no *general offence* criminalizing terrorist acts as such. Specific terrorist acts are penalized in the same way as if they were committed without terrorist motivation, for instance as murder, endangering by explosives, hijacking of a ship etc. The sufficiency of existing domestic law will depend upon a number of factors seen from countries specific perspective. Apart from defining jurisdiction, providing authority, and prescribing penalties the national legislation should adequately address the protective measures and preventive safeguards. The protection from the abuses of facilities and infrastructure such as ship and port terminal forms major consideration while deciding on legislation.

## **CHAPTER IV**

### **IMO AND MARITIME SECURITY**

#### **4.1 Maritime Security and Role of IMO**

Although the IMO Convention does not bring the issues related to maritime security directly under purview of the Organization, the fact that safety of life and ships and efficient navigation is threatened by terrorist and violent activities at sea, gives jurisdiction to IMO to act as an platform for tackling them at the international level. The technical nature and consensus decision-making process of this organization has further blocked its aspirations to do something directly. Perhaps to involve IMO in activities of terrorism directly would imply bringing a lot of politics within its decision-making organs and such should be discouraged.

UN is best adapted to deal with these issues and development of an umbrella convention on terrorism with reference to organization such as IMO, ICAO, ILO, IAEA, etc to further develop technical and legal provisions in their respective areas, is an ideal situation. UNCLOS has been developed this way and has proved its effectiveness in areas of marine environment pollution. Kanazaki (1992) agrees on the aspects of UN involvement in role of maintaining a order at sea:

“The various rules of orders for a ship's safe navigation, transit, structures, search and rescue efforts, security of harbours and channels, preventative measures of ocean contamination, control of exploit and development of seas and the preservation of maritime natural resources are established and maintained mainly by the United Nations. In addition, some regional groups and specific countries established a bilateral or multilateral mechanisms in the limited circle, but the United Nations keeps the leading position by

providing "Convention on the Law of the Sea" and many other rules mostly oriented by IMO."

Perhaps it is best that, instead of developing sectoral conventions, an umbrella convention with cross references to various sector would be more effective and would also save these international organization the trouble of further restructuring and enlarging their activities.

#### **4.2 Previous work of IMO related to maritime security**

Maritime security is not new to IMO, but it has, with the situation around the globe, become a burning topic. IMO started its work on maritime security in 80's, first in the areas of piracy and armed robbery and after the incident of *Achille Lauro* broadening its scope into terrorism and other violence at sea. The Swedish proposal in 1983 resulted in adoption of Resolution A 545(13) on "Measures to prevent acts of piracy and armed robbery against ships". This resolution urged Governments to prevent and suppress acts of piracy and armed robbery against ships in or adjacent to their waters. IMO's work in the field of Maritime terrorism, however started with adoption of Resolution A 584(14) on "Measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews" during 14<sup>th</sup> Assembly session in 1985. The IMO Assembly directed the Maritime Safety Committee to develop, on a priority basis, detailed and practical technical measures, including both shore side and shipboard measures, to ensure the security of passengers and crews on board ships. The measures were to take into account the work of the International Civil Aviation Organization (ICAO) in the development of standards and recommended practices for airport and aircraft security. In December 1985 further support came from the United Nations General Assembly, which called upon IMO "to study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures. The first substantial document from IMO, as a means of preventive measure came out in form of MSC Circular (MSC/Circ.443), issued in 1986, on measures to prevent unlawful acts against



passengers and crews on board ships - which states that Governments, port authorities, administrations, shipowners, shipmasters and crews should take appropriate measures to prevent unlawful acts which may threaten passengers and crews. The Circular gives guidelines on measures that can be taken - with application to passenger ships engaged on international voyages of 24 hours or more and port facilities which service them. This circular forms the basis of IMO's work in developing the present security code. In November 1986 the Governments of Austria, Egypt and Italy proposed that IMO prepare a convention on the subject of unlawful acts against the safety of maritime navigation, which ultimately culminated into SUA Convention and its Protocol.

#### 4.3 Recent and Future Activities of IMO

Following the atrocious terrorist attacks of September 11, 2001, and subsequent to the unanimous approval by the IMO Council, at its twenty-first extraordinary session, of the corresponding draft Assembly resolution, proposed by the Secretary-General, the Assembly adopted (November 2001) unanimously without changes resolution A.924(22) on "Review of measures and procedures to prevent acts of terrorism which threaten the security of passengers and crews and the safety of ships".

To pursue further the Organization's response to any threats on shipping posed by acts of terrorism, the Assembly took a number of additional decisions, including the convening of a Maritime Security Conference in December 2002 to adopt amendments to the SOLAS Convention and possibly the STCW Convention, the preparation of which was entrusted to an intercessional Maritime Safety Committee (MSC) Working Group on Maritime Security (ISWG), scheduled to meet in February 2002 with agreed terms of reference, and the establishment of a fourth *ad hoc* working group at MSC 75.

Pursuant to operative paragraph 1 of resolution A.924 (22), which “requests the Maritime Safety Committee, the Legal Committee and the Facilitation Committee, under the direction of the Council, to undertake, on a high priority basis, a review to ascertain whether there is a need to update the instruments referred to in the preamble paragraphs and any other relevant IMO instrument under their scope and/or to adopt other security measures and, in the light of such a review, to take prompt action as appropriate”, action has been taken by the IMO bodies concerned as reported in the ensuing paragraphs.

IMO's FAL Committee acknowledged that facilitation and enhanced security were complementary to each other and should not be viewed as excluding each other. Enhanced security could lead to the expeditious clearance of ships, crews, passengers and cargoes. To ensure that this aspect was taken into account, the FAL Committee recommended that existing documentation requirements for seafarers and for the clearance of ships should be reviewed and, where necessary, security improvements should be made prior to any action being taken to initiate new and/or additional documentation requirements.

IMO's SPI Working Group, giving initial consideration to maritime security matters from the port perspective, recommended that security considerations should cover all ships, those on board (passengers and crew), off-shore terminals and the whole port area, including port approaches, port operations and persons ashore (port personnel or nearby inhabitants).

IMO'S STW Sub-Committee, in considering the outcome of a study on Unlawful practices associated with certificates of competency, also considered whether there was a need to develop guidance on appropriate disciplinary measures or sanctions of sufficient severity against persons involved in fraudulent practices. Noting that STCW regulation 1/5 required each Party to prescribe penalties or disciplinary measures for cases which included fraud or the use of forged documents and that the

national provisions implementing such penalties and measures had been communicated to the Secretary-General and evaluated by competent persons, the Sub-Committee did not, therefore, consider it necessary to develop guidance on the issue.

The ISWG developed a work plan and timeframe for further work for consideration by MSC 75 for approval and any further appropriate action.

The regulatory review process described above will be completed in December 2002, when a diplomatic conference will be held in London to adopt amendments to existing IMO instruments and/or new ones. Consideration of how best to integrate maritime security in the long-term goals and objectives of the Organization to ensure that it remains a high priority item for the foreseeable future was considered by the MSC (May 2002), at its seventy-fifth session, aiming at developing a strategy on maritime security. During 75<sup>th</sup> Session of MSC (15-24 May, 2002) the preparatory work for the December conference continued and proposed an International Ship and Port Facility Security Code (ISPS Code), which would be implemented through SOLAS chapter XI.

Prior to the Diplomatic conference in December, another session of ISWG will be held in September to finalize some of the issues. IMO's Legal Committee in its 84<sup>th</sup> session, meanwhile, concluded its decision on a controversial issue of ownership. It decided that central or fundamental question in matters relating to ownership and control of vessels for maritime security purposes is who has effective operational control of the ship, and has identified a number of ways in which this can be determined. The Committee concluded that answers to the following three questions would be relevant:

1. Who appoints the crew?
2. Who fixes the use of the ship?
3. Who signs the charterparty on behalf of the owner?

#### **4.4 Building capacity for maritime and port security**

The Assembly also endorsed the proposal of the Secretary-General that simultaneously with the review process – but without awaiting its full conclusion – funds should be allocated to assist countries to assess, put in place and enhance appropriate infrastructure and measures to strengthen port safety and security so as to prevent and suppress terrorist acts directed against ports and port personnel, as well as ships in port areas, passengers and crews.

IMO has now launched a global program on maritime/port security, with initial funding of US\$2,145,000, so that the Organization can address the related technical assistance needs of developing countries.

IMO's global program is essentially a capacity-building one, providing awareness training on threats to shipping and port operations and on the preventive measures that can be put in place immediately – and are likely to become mandatory – including the preparation of vulnerability and risk assessments, and consequent security plans for designated ships and ports. It is not IMO's intention – and nor does it have the required funding for it – to undertake capital expenditure activities to address the physical infrastructure improvements that many ports in developing countries will certainly require to strengthen their security measures. Accordingly, IMO's program is concentrating on the activities as annexed

#### **4.5 Next steps**

The international shipping and port communities are keenly aware of the impact that acts of terrorism would have on a transport mode that is so vital to world trade and the global economy. The review process initiated at IMO reflects the unequivocal determination of the maritime/port sector to prepare for, prevent and suppress such

acts. This is already building up global confidence in the sector's ability to respond appropriately to the scourge of terrorism.

Meanwhile, much has been said recently about the potential linkage between poverty and deprivation, and the creation of conditions in which terrorism may arise. These are views that IMO shares fully, and it is therefore equally concerned that a significant and prolonged down-turn in world trade, as a result of terrorist attacks in the maritime/port sector, will be particularly damaging to the economies of the developing countries, many of which depend entirely on shipping for their day-to-day commerce and on a clean marine environment for their tourism and fisheries industries. The capacity-building program that IMO has now launched therefore seeks to forestall such effects by helping developing countries to put in place the required maritime/port security measures.

In this context, IMO foresees that there will be a continuing need over the next few years, to train maritime and port personnel on the emerging mandatory requirements for the development and maintenance of security measures, and to equip facilities with the necessary security infrastructure.

As the funds available to IMO for this purpose are limited, the Organization is already in touch with potential development partners – for example, the World Bank and the United Nations Development Program – to seek co-financing and ensure appropriate co-ordination of activities and maximization of resources. In this context, the President of the World Bank has already responded to IMO's call for co-operation in a very encouraging manner, indicating that in its financial operations for the development/enhancement of port infrastructure, it will seek to promote effective compliance with the new maritime/port security regime that is currently being developed by IMO.

## CHAPTER V

### National Policies and Measures on Maritime Security

Maritime security imposes a responsibility on contracting state to translate the mandate into national goals, strategies, plans, actions and legal instruments for securing the sector and the trade, and while protecting own interests cater to other country's interests also. Although safeguarding maritime interests of a country are the first priority, such measures when taken adequately in light of International obligations would also protect the maritime industry internationally. IMO has been selected as the international forum to address all the issues related maritime trade by all the players in the field. Whether the outcome will be the missing link in establishing true maritime safety culture or just more rules is being watched very keenly. The success of these steps will ultimately depend on how effectively they are implemented at the national level. The maritime administration of a country as a regulator or facilitator of the services was so far remotely aware of the security needs, but now is faced with varied, challenging and relatively new tasks. Will the current trends require it to move in the direction of greater integration of its safety and security initiatives so as to benefit from the best possible synergy between the two is yet to be seen? The needs for securing the industry, trade, and country are to be translated into action and are discussed here keeping in view the proposed steps and ongoing work at IMO.

The national policy on security is a challenge encompassing many agencies and departments. A better coordination and cooperation can only be achieved with a commitment starting from the top most levels. While states clearly have a responsibility to establish regulations, it is crucial that governments consult with the industry before new maritime security regulations are put in effect. This will help regulators to develop language that is well understood by the industry, as well as

generate awareness of the financial impact of a proposed regulation. This kind of cooperative relationship will ensure that the measures adopted are effective, efficient and manageable, thus achieving a higher-level of security by facilitating compliance.

### **5.1 Collective responsibility**

The traditional concept of states protecting merchant ships under the national flag is fast fading. Instead, a concept whereby the importance of the cargo governs the need for protection seems to be emerging. But there is, as yet, no framework for the protection of multinational shipping interests, merely a fuzzy concept of presumed corporate rights and sovereignty that has yet to be linked to a parallel concept of collective accountability. It is becoming clear, though, that collective requirements to protect shipping do exist. The collective responsibility also ensures that unilateral actions are prevented to a larger extent. The concept is to illustrate as to how best the interests of one can be served by other. There is no doubt that multilateral instruments are influenced by unilateral actions. While not justifying the unilateralist actions, we can also not deny individual country's needs to protect its people, assets or facilities. The rule of thumb though is to try multilateralism first and in cases of failure to get causes addressed in the international forum as a last resort unilateralist approach is to be tried out. The multilateral approach if implemented uniformly by all the states taking collective responsibility to ensure the entire system is secure will reduce the chances of unilateral action being taken by some of the high-risk countries. The national and international policies and instruments are also required to be integrated at different levels to achieve desired results. Merely harmonizing the instruments at lower levels will not prove beneficial in the long run.

### **5.2 The national predicament**

Maritime security issues raise some comprehensions amongst countries concerning actions and outcomes. The security dilemma of developed and developing countries

are different, as the trade is largely prevalent in developed world the ships and crew increasingly belong to developing country. While this may further the debate on sub standard ships and crews, there is no doubt that stricter control will be exercised on foreign ships. In case of developing countries the predicament is on two accounts, one, on the assumption that the perceived threat by some of the countries is beyond realistic levels and so the imposition of strict border control is not justified and unnecessary control is going to hurt their interests. The second is based on their limited capabilities to ensure security standards for the ships and port facilities, as desired by these countries. While these assumptions should not give justification for non-observance of international regulations, there is no doubt that will affect uniform implementation. It is no longer a THEY and WE situation, because everyone realizes that the stakes are too high and the cost of getting things wrong has to be counted not just in money but also in lives. A national policy is to be based on bringing harmonization and uniformity keeping the interest of world trade and shipping in view.

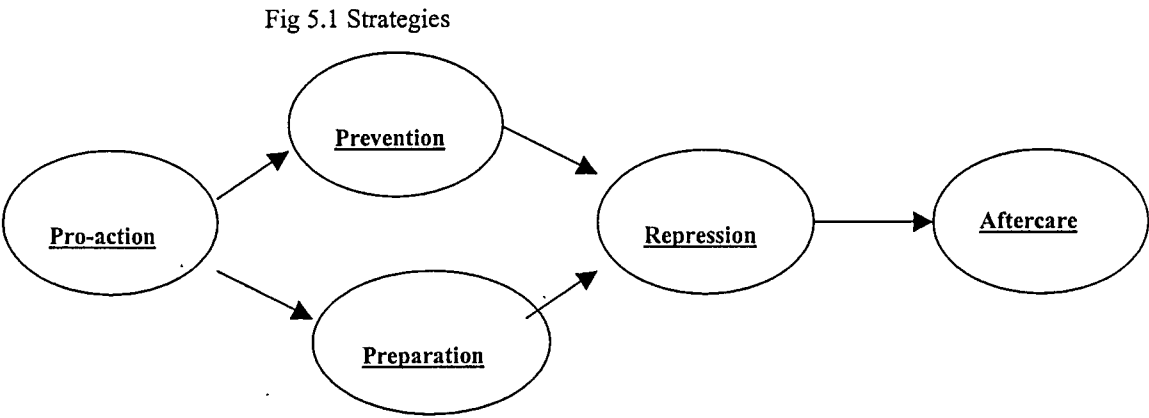
### 5.3 The challenges for the governments

*Fighting terrorism is not traditional 'war', nor should it be. It requires a whole series of countermeasures in the political, diplomatic, legal, economic and military spectrum, and the action of governments as well as private interests. A strategy dependent upon identification and elimination of specific threats will have to be combined with another strategy focused on preventing larger threats of potentially catastrophic range. Tailored policy changes will be required in areas as different as law enforcement, criminal justice, intelligence, military organization, immigration policy, regulation of finance and banking, private sector cooperation in transportation, insurance and protection of critical infrastructure.(DNK Report, 2002)*



Many of these measures will not be effective unless there is international cooperation. Terrorism is, however, not the only problem in the world. Terrorists want governments and societies to overreact and to adapt their behavior in the direction they desire. Hence, the temptation to overreact should be resisted. Potentially, ill-informed application of countermeasures can be as disruptive as the original threat itself. Wise, well-measured responses are required, and certain sacrifices must be made, but they should be applied in ways that does not require more compromises with freedom of movement, of global commerce, or of civil liberties and democratic rights that what is deemed absolutely necessary. The outcome of forthcoming conference on maritime security will require governments to develop a policy which while keeping national interests at prime level, have due regards to global threats and at the same time does not over constrain the industry.

To come to an effective maritime security policy, attention has to be paid to both the sources of threats as well as minimization of the effects. The approach can be visualized as follows:



The strategy to combat violence and terror at sea requires multi pronged and multi dimensional approaches at the national level. Four distinct regimes at national level are required to fight terrorism and violence at sea and they should be well

coordinated and integrated to form an effective protection and deterrence device. The first is an adequate *legal regime*, which forms a sound base for the national policy in security issues, besides providing jurisdiction over the offences in order to enforce regulations. The law of the state speaks about the will and determination of a country to fight crime. The importance and adequacy of a national legal regime has been discussed in the earlier chapters.

The second national policy step would be building of a *protective regime* for effective marine policing, be it Navy or the Coast Guard to ward off the threats posed against national security. How effective the policing or patrolling should be, will in the end decided by a host of factors outside the scope of Maritime Administration, but there is a need for the administration to indicate their requirement to safeguard the industry and trade.

The next aspect is regulatory measures to be adopted by Administrations, Port Authorities, Customs, Immigration and training institutions as part of the *preventive regime*. International agreed standards are to be implemented on ships and facilities through mechanism of control (Flag and Port State). The regulatory measures will also include assessment of risk levels, closing the loopholes and incorporation of technology.

Lastly, there is a need for *cooperative and information sharing regime* both at intergovernmental and international level amongst the host of agencies and states involved. This requires designation of a lead organization at the national level, for coordinating the various activities and agencies. Since shipping is part of a larger chain of integrated transport, various players of the chain are required to know what is expected from them and that there are no duplication of efforts. Government and industry's closer interaction and understanding is vital for success of the policy.

The issue of maritime security may not be entirely new to maritime administrations, but it is more relevant now than ever. There are still questions and doubts whether the security of entire chain will be entrusted into its hands as a lead agency or it will play a role solely connected to ship's security. If entrusted, it is vital that all connected with maritime trade must recognize the role of the lead agency at the national level. Multiplicity of organization requires the Administration to build confidence and play a role model. The efforts are also to be directed to achieve a balanced approach without harming the trade and also not compromising the national and international security.

#### **5.4 The regulatory and administrative requirements**

The proposed amendments to SOLAS, adoption of ISPS Code, review of SUA convention and changes in ILO Convention on Seafarers Identity document can achieve the desired effect only when implemented nationally. This necessitates multiple activities to be performed on the part of administration and the industry. The raft of measures proposed by Maritime Security Working Group (MSWG) of MSC 75 will enhance the role of the regulatory authority for providing additional set of security boundaries within which participants be it ports; ships, cargo, passenger and crew operate. The desired regulatory out-comes will be achieved by controlling and monitoring participants for continued compliance with the rules, and removing any participant unable to reach or maintain standards. It is important that regulatory agencies set an example to the industry and adopt within their own organizations a quality management approach similar to that expected of participants.

##### **5.4.1 SOLAS amendments – The case for early implementation**

Proposed amendment to SOLAS are concerned with Chapter V (Safety of Navigation – matters related to early implementation of AIS) and Chapter XI(Special measures

to enhance safety – this to be renamed and an additional part is to inserted in this chapter for special measures to enhance security) The inclusion in SOLAS has been chosen for all the issues related to security for a possible expeditious course of action but the problems faced from ISM implementation through this channel must be kept in mind. On a practical level, initial over-enthusiasm may have a negative effect on the shipping communities in implementing the code. The draft conference resolution prepared by MSWG<sup>8</sup> draws attention to this fact and urges the Governments to take actions in advance for an early implementation. ISM with all the documentation and certification was after all an activity very much within domain of shipping itself and was still divided into two phases for ease of implementation. Security aspects present different situation, a host of external agencies such as domestic law enforcement agency, customs, immigration, port authorities, intelligence services, and private security agencies will be involved in assessing the threat levels for infrastructure and ships and for plugging in the loopholes – administration or the shipping companies alone can not do it. Again it is not a one-time activity, the goal is to maintain a consistent level of risk by offsetting changes in threats. There are a range of external issues affecting vulnerability of ships and infrastructure, which in turn will increase or decrease the threat for a particular asset. This necessitates creation of permanent machinery with all those agencies mentioned earlier, constantly updating the information and taking appropriate actions. The question of jurisdiction for law enforcement agencies is yet another hurdle, which prevents a central machinery to be incorporated within the administration. Local ports remain under the criminal jurisdiction of local police or other such agency and a country may have numerous ports under varied jurisdiction. The whole idea of an early implementation hence requires a strong commitment and setting up priorities for the Administration at the top most level. The success of this code will ultimately depend upon the global uniform application and implementation. Is the timeline as stipulated, sufficient enough for all the Governments party to the convention? We must also remember

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<sup>8</sup> See IMO Doc MSC75/WP.18 Annex 5 pp 8

that we are talking about SOLAS convention that has been ratified by 141 countries representing over 98% of world tonnage.

#### **5.4.2 SOLAS Chapter V- the issue of AIS**

SOLAS 1974, Chapter V went through a complete revision in December 2000, and these changes have just come into force. They include a number of important new requirements for ships, including those relating to carriage of VDRs and AIS and acceptance of electronic charts as meeting the chart carriage requirements. AIS is intended to provide a ship's identity, position, course and speed, among other things. These amendments have entered into force on 1 July 2002 and provide a phase in schedule that begins in 2002 and ends in 2008 depending on ship type and tonnage. The current proposal recommends that AIS should be installed speedily on all ships as soon as possible within the legal framework of SOLAS. Many owners have expressed concerns that AIS cannot be installed within a reasonable time frame on vessels covered by the new requirements. The paper submitted by Australia<sup>9</sup> says, "The issue of ship identification was highlighted in the report of Lord Donaldson's inquiry into the prevention of pollution from merchant shipping titled "Safer Ships, Cleaner Seas" (1994). The report noted that a striking feature of ships, as contrasted with aircraft, is their relative anonymity whilst en route and concluded, "*this anonymity should not be allowed to continue.*" The application of secure satellite technology on a regional or global basis provides a modern and cost effective means of achieving this for not only environmental concerns but also for reasons of maritime security and safety"

AIS may also become a tool of surveillance for coastal states vis-à-vis ships navigating within its range. Can there be legal implication to such surveillance by coastal state? Although Burke (1975) recognizes coastal states legal right to surveillance

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<sup>9</sup> IMO Docs.MSC 75/ISWG/5/2..By Australia

“The issue pertaining to surveillance in areas subject to national jurisdiction is generally based on assumption that it will be carried out by the coastal states so long as they find it useful for specific purpose. Beyond areas subject to coastal jurisdiction, surveillance is generally considered an activity compatible with unrestricted use of the ocean, at least so long the physical measures are not carried out to such an extreme that normal activities are threatened or harmed”.

The freedom of oceans as enjoyed by shipping earlier will certainly be impaired to an extent. Also, the issue of disclosure of information may work against the business interest of shipowner, charter or operator, if it is not protected properly. Moreover the information may also become useful to perpetrators planning an attack on the vessel and infrastructure by providing up-to-date details.

The draft amendment incorporates provision for ships to maintain the AIS in operation at all times<sup>10</sup>. While it is plausible that flag and port States will police installation of AIS transponders. Less clear is who will enforce transponder operation and maintenance, i.e. ensuring that transponders are turned on during the voyage and that they work properly. Apart from that static data (call sign, name, etc.), dynamic data (position, speed, course, draft etc) and voyage specific data (draft, tow configuration, destination, ETA, hazardous cargo information, etc.) will have to be kept up to date in the transponder. Who, apart from the bridge team, is in a position to enforce that this information is correct and entered in a timely fashion? VTS Center staff? Ship's log inspectors? Pilots? Port and flag state enforcement of AIS will reduce the number ships that don't install AIS or don't operate it properly, however, authorities should realize that it will require significant enforcement resources and that even if these can be marshalled, ship operators' voluntary cooperation will still be needed to make AIS work. A further impediment is that even "willing" ship operators can't always control what the bridge team does or when?

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<sup>10</sup> see IMO Docs MSC75/WP18/ADD.1 Annex 1 pp 2

The other issue from Chapter V addressed in the code is relating to Regulation 14 (Safe Manning)<sup>11</sup>, whereby the administration is asked to take into account the additional workload resulting from implementation of ship security plan, while considering safe manning. Different security levels will require different activities to be incorporated as per the plan and ultimately will result in more working hours for the crew or increase in crew size. The current trends towards smaller crew size has, as it is, been criticized due to disregard of safety and whether the international and domestic statutes regulating crew size adequately protect crew, ship and environment adequately. The administration will have to amend the crew requirement regulations, which for sure is not going to be liked by the industry. Can there be a role for outside agency in safeguarding the interests of a port facility and ship especially at the point of interface, is to be decided by the administration, which to certain extent will ease the pressure from the industry.

#### **5.4.3 SOLAS Chapter XI-1**

The proposed amendments in this chapter and part affect existing Regulation XI/3 concerning marking of Ship's Identification Number, this was also considered by FSI Sub Committee during its 10<sup>th</sup> session in order to enhance ships identification and prevent the ship being used as a phantom ship. New regulations in this section include proposed Regulation 5- Continuous Synopsis Record and Regulation 6 – Specific Responsibility of Companies. The Administration has been given the responsibility of issuing and updating the CSR as a new statutory obligation of the flag state, the CSR may present a substantive new workload for certain administrations. It will also require systematic co-operation between companies and flag administrations. Significantly, the recognized classification societies informed the IMO that in their view, the obligation to keep the CSR up-to-date “should not rest with the administrations and the recognized organizations, nor is it considered that class should be made responsible for maintaining its accuracy.” Information

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<sup>11</sup> Preamble of Draft ISSP Code vide IMO Doc MSC75/WP18/ADD.1 Annex 2 pp 3

technology is bound to play an important role in the implementation of the CSR requirements. Besides port state control repercussions on a non-updated CSR is still to be clarified.

United States proposal of transparency in ownership criteria has been accommodated in Regulation 6, though in somewhat diluted form, by laying responsibility on the owner to keep records of information as to 1) Who appoints the Crew; 2) Who fixes the use of the ship; and 3) who signs the charter party. It is a compromised solution and perhaps nothing new comes out of it. The hidden identity of the real beneficial owner is still not revealed. The point that US was trying to make that the ships are directly or indirectly not being used for terrorist and subversive activities is not resolved by the information. Most of the conventions recognize registered owner and the designated person under ISM. Three more entities are uncovered by this code, perhaps just making the circle a bit bigger.

Another point which, however should be kept in mind while debating over the issue of ownership is that of powerful measures being brought about by UN Treaty on Suppression of Financing of Terrorism, which came into force on 10<sup>th</sup> April 2002. If the sole aim of ownership debate is concerned to terrorism, this treaty adequately addresses the issue. This Convention recognizes that financing is at the heart of terrorist activity, and it paves the way for concerted action and close cooperation among law enforcement agencies, financial authorities and States. The provisions of the treaty also requires state parties that they must take measures that would allow “legal entities” to be held liable for actions taken by a person responsible for the management or control of that entity. Perhaps it is best to leave the issues related to ownership connected with terrorism to this particular treaty.

#### **5.4.4 SOLAS Chapter XI-2**

This proposed new chapter will incorporate provisions for applicability of International Code for the Security of Ships and the Port Facilities. Regulation 5 of



this chapter speak about installation of a ship security alarm on board and activation of such alarm will transmit a ship to shore security alert to a competent person as designated by the administration. Probably the alert is going to be handled by National Search and Rescue Co-ordination Center, manned by Coast Guard, Navy or the Administration itself. Complexities of security will require sensitive handling of the issue and international cooperation required is much more demanding. Moreover an infected ship may be treated as untouchable and countries may refuse to allow it to enter their water or act on request due to varied reasons. The UNCLOS or the SUA treaty does not oblige the coastal state to render assistance to foreign ships in such a situation. The effectiveness of flag state in providing a remedial service to its ships is minimal especially in foreign waters. What solutions, if any, are then we providing to a ship transmitting an alert? Perhaps it best serves the interests of Coastal states only. This situation is also required to be addressed in SAR and Port of Refuge Conventions for effective remedy to ships thus threatened.

Regulation 9 of proposed chapter addresses issue of control mechanism. It authorizes for port state control inspections to determine compliance. IMO is attempting to strike an appropriate balance between the need to protect the port facility and protect the rights of ships. The requirements may include controls, but will not be limited to, the ship's delay, detention, and other operational restrictions including expulsion from the port or denial of entry into port. Not only can ships be penalized for their inactions to take measures but also for the violations by the port facility during current or previous ship/port interface (Regulation XI-2/9.2). The conclusion that a foreign port facility was in violation of requirement may prove to be quite controversial and subjective. Not only ships but, even ports can be targeted in this process. This regulation is not a port state control provision and represents a significant new extension of control. There is, therefore, some concern about the possible implications of such a precedent.

#### 5.4.5 ISPS Code

The proposed code takes a view that the ship and port facility security is, basically a risk management activity and the most effective course of action is to eliminate the source of risk, which in the end is essentially government function. At the heart of this strategy is the requirement for country's self assessment or security audit to establish the level of risk which will evaluate the further course of action, that is to identify and correct deficiencies. The global maritime security plan of action to be adopted by the conference includes the following elements:

- The identification, analysis and development of an effective global response to security threats, embodying functional requirements and integrating timely measures in specific fields including ships, port facilities and control systems;
- The strengthening of security-related provisions in the existing convention,
- The implementation of regular, mandatory, systematic and harmonized survey and certification process

**Requirements for port facilities** : Port Facility Security Risk Assessment is the first step in the implementation of the code. The risk assessment takes into consideration the threat, vulnerability and criticality factors. Further requirements will include a security assessment, a security plan, a designated port facility security officer and security training and drills. It is generally agreed that the assessment of an appropriate security level is a matter for national administrations and the ship and port facility security plans should allow for changes in security levels. Developing and implementing requirements for port facilities in sovereign states is a relatively new subject to IMO<sup>12</sup>. Ports around the world are under different regulatory regime, and other international agencies like International Labor Organization, World

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<sup>12</sup> In 1995 IMO Assembly, adopted resolution A.786(19) requiring the SPI Working Group to deal with a number of topics concerning Interface issues between Ship and Port and also to act as a forum of co-ordination between international organizations on matters relating to the ship/port interface. Since then, the SPI Working Group has been functioning under the overall direction of IMO's Facilitation Committee

Customs Organization, etc. also have jurisdiction over them. It was agreed that the IMO should work together with these organizations to co-ordinate efforts to combat acts of terrorism. Therefore, any amendments to SOLAS Chapter XI concerning port facilities will focus primarily on the 'ship/port interface', and this has to be further broadened. At this time there is considerable debate regarding the certification, survey and control procedures for compliance with port facility requirements. These issues will be finalized when the SOLAS Chapter XI amendments are completed in December 2002. On the practical side a number of state will require technical expertise and assistance to establish a system of security audit for their port facilities. A regional cooperation group to assist member countries will best serve the purpose. The aviation security audit program launched by the European Civil Aviation Conference (ECAC) can be a model for maritime sector. It establishes a system of international audits conducted by a multinational team in the territory of a third State. Further such a system will also ensure that the security assessments are conducted in a fair manner and will be widely accepted.

Port authorities usually are the director and facilitator of the port as a logistical nodal point and as such they can provide a valuable contribution to the establishment of an integral port and maritime security policy. Such a policy however involves the responsibility of all relevant authorities and operators : police, customs, immigration services, terminal operators and other service providers, port users etc. Formation of port committees at local level will solve the problems of coordination amongst these agencies.

Apart from identification of risk levels, nomination of security officer and provision of port facility security Plan, the other areas a port would require to look into are inspection of cargo and containers, positive identification of port workers, exchange of information between ship and port related to ship, cargo and its crew to plan proper ship-port interface, and finally having a response contingency plan. There is

some anxiety in the port sector, as these steps when given effect would certainly result in delays and congestion.

Another issue which arises out of port security risk levels is that the competition between ports is now also going to be affected by the risk factor which to a large extent is outside the scope of a port. A port may be very efficient and competitive in terms of cost but with implementation of security measures would require additional inputs from port as well as ships and could create bottlenecks resulting in delays. This port has thus lost its competitiveness to other ports in neighboring countries where the risk levels are considerably reduced due to conditions in the state itself.

**Requirements for owners and their ships** : The Code stipulates a survey and certification regime for ships. Owners will be required to obtain an International Ship Security Certificate issued by the flag administration for each ship indicating compliance with the mandatory sections of the ISPS Code. Compliance with the ISPS Code will require:

- Development of a ship security assessment and plan;
- Documenting training, incidents, breaches of security, maintenance and calibration of security equipment records, etc.;
- A designated and properly trained ship security officer;
- A designated and properly trained company security officer to co-ordinate the Company security plan;
- Training and drills for ships and companies to respond to terrorist threats.

Companies will be expected to follow established procedures in keeping copies of all ships papers, certificates and plans ashore as already required by the ISM Code for other types of documentation. The company or ship's personnel will conduct ship security assessments. The assessment addresses the security risk level to be levied for each ship or each class of ships as a prerequisite for the development of the SSP. A ship is required to act upon the security levels set by the flag administration.

**Records and Training** : The Code requires records of the activities addressed in the plan to be kept on board. In some respect, use of log or record book can be a useful enforcement device, but in case of breaches of criminal law the complications may arise if a person is required to log certain information and at the same time accurate entry may provide evidence, which might lead to his prosecution and punishment. This issue has to be rectified by adopting suitable regulation for true and correct entries to be made in this log. The training requirements for the ships and port facilities is integral part of the code ensuring that the staff are competent in operating security equipment is also an essential step in bolstering the level of security. All persons involved in the implementation of security controls must be trained effectively and kept up to date on new developments, based on prerequisites and criteria developed and approved by states and probably also the industry through internationally recognized implementation standards. Training institutes will have to be equipped to cater to provide this training to crew and specially to designated ship security officer.

### **5.5 Seafarer identification**

Enabling the identification of seafarers has been identified as a critical element in combating terrorism, particularly in relation to the "insider threat" that is the involvement of ships staff in committing an act of unlawful interference. IMO has expressed its strong commitment to work closely with the ILO to address all maritime security matters and, in particular, seafarers' identification. The International Labor Organization (ILO) has been working on accelerated procedures for the review of ILO Convention No. 108, including seafarer identification. The issues to be addressed include:

- The purpose and advantages of an international identification document for seafarers;

- The content of the new document and requirements for positive verifiable identification, including biometric templates;
- Issuing authority;
- Procedures for issuing new documents;
- Special status of refugee and stateless persons;
- Facilities to be granted including bearer re-immigration;
- Form and physical characteristics of new international seafarers' identification document; and
- Monitoring and control methods.

The government of the United States was of the view that issuance of seafarers' identity documents should enable seafarers to be positively identified in order to ensure that they posed no threat to national security or to the safety and security of maritime commerce. Although background checks for seafarers, as proposed in US proposal, have been dropped by the committee on grounds of violation of human rights, it still may find its way into certain countries legislation and the implications of such an act would either result in cancellation of shore leave for sailors or refusal of entry for the ships

Major crew supplying countries would benefit from taking early action in this regard and maintaining a verifiable crew record and database, although the activity in itself can be mammoth for countries like Philippines, Indonesia etc. The positive identification document for seafarer will arrest the practices of false documentation and certificate. However, the administration should start taking steps to provide the documents supported by a database, which can be accessible to others so that crew and shipowners are not put to inconvenience. Not only shore leave for the crew is at stake but also the problems may arise for crew changes.

## 5.6 Securing the cargo

Sea transport of closed containerized transportation units (CTUs) pose a significant maritime security threat. It may provide the possible perpetrators an opportunity as the weak link within entire transportation chain. It was agreed that the IMO would develop, as a minimum, mandatory requirements within SOLAS Chapter XI to reject unsealed closed CTUs. It was agreed that the integrity of closed CTUs in multimodal transport is best left to the WCO and amendments to IMO instruments should only be made once the WCO has completed their work in establishing the relevant requirements. The WCO Council is planning to meet in June 2002 and will progress the matter further at the WCO Enforcement Committee meeting scheduled for January 2003. Securing the cargo at the origin is the best possible solution and the states must address the issue with that aim. While presently a number of technology is already available and lot more are being developed. The measures to be taken requires that the content of the containers are identified and verified correctly, the container is sealed with a tempering proof seal with electronic coding, tracking of containers is achieved and finally the secure chain of custody has to be established.

US has launched Container Security Initiatives (CSI) program, which is a step towards bilateral agreement for securing the cargo at the points of origin. By targeting major top 20 ports from where containers come to US, they are, thus eliminating a big chunk of containers (about 80% of containers) from verification at entry point in their country. There are, however certain criticism for this initiative from EU, which feels that US is infringing upon the countries sovereignty. Further they feel that the US standards should be in line with IMO and it will be impossible to unilaterally impose inspections without cooperation of the port state. There are also fears that the CSI will distort competition between EU ports, with smaller facilities losing out to "US approved" box hubs. However, member countries have shown willingness to go ahead and join the program, which is evident from the actions of ports such as Le Havre, Rotterdam and Antwerp in Europe.

## **5.7 Capacity Building Measures**

There are numerous measures, which can improve understanding, specific abilities, or management practices among the public agencies and government officials. These measures can be used to increase capacities to reduce risk. It is often possible to reduce the threat of human-induced hazards, such as terrorist acts and sabotage. In these instances, capacity-building efforts can also be directed toward reducing the hazard. Therefore, capacity building to reduce either the hazard or the vulnerability will decrease community risk. Capacity building can be an effective and necessary strategy for reducing community risk. Nationally the capacity building initiatives should be directed at providing support to all segments of the industry such as ports, shipping companies, training institutes, cargo operators and intermediaries. Industry requires that the burden is shared and support mechanism exists at different levels from government side. Funds will be a major constrain for developing countries and help from international organization should be provided to ease the pressure on national budget.

## **5.8 Information management and awareness programs**

An effective security system requires high quality information and information exchange. Accurate and timely information is crucial for the identification of potential threats and for taking the proper counter measures. It is necessary to lay the responsibility for information collection, interpretation and dissemination with a qualified organization such as the police or an intelligence unit. This focal point should maintain close contact with relevant national authorities as well as local parties such as port authorities and industry. Proper and unambiguous information to the relevant parties is of importance in order to create a firm basis for the measures to be taken. A communication plan should therefore be part of the security plan at different levels. Networking of information at regional and international levels are the next step to information management.



It is also necessary to develop a program aimed at creating awareness among different communities by explaining the various potential threats, in terms of calamities as well as economic damage.

## **5.9 Partnership**

Government and industry joint partnership is necessary for the success of security initiative. This will build cooperative relationships that strengthen overall supply chain and border security, recognizing that authorities can provide the highest level of security only through close cooperation with the ultimate owners of the supply chain--importers, carriers, brokers, warehouse operators and manufacturers. The initiatives should be aimed at ensuring the integrity of business security practices and further in communicating their security guidelines to their business partners within the supply chain.

Custom Trade Partnership against Terrorism (C-TPAT) is one such initiative taken by US Customs to make the industry their partner in the efforts to eliminate terrorism.

## **5.10 Contingency planning and repression of terrorist activities**

The certainty that the terrorist act will affect either to a ship or to a port facility is something beyond prediction. Contingency plan, to take care of after the event, must be in place for all the facilities and ships. Such plan must aim at reducing the effects of an event to life and property. The plan should identify key personnel and their role in an event, enlist the procedures for taking action and evacuating people and detail the equipments and their location. This plan will best be initiated at various levels, keeping in mind a final integration unto national level. Like other marine

contingency plans this will be an on going activity and will require updating regularly. This will also be a secret information and has to be handled very carefully.

Repression of violent activities on board ship or within a port is mainly an activity which is on a large extend outside the scope of maritime administration, as the causes lie outside this domain on most of the occasions. However, IMO also has recognized the linkage between social and economical aspects within a country and the acts of terrorism. Administration can bring these issue to focus within the government, highlighting the repercussions on maritime industry.

## **CHAPTER VI**

### **Conclusions and Recommendations**

#### **6.1 Conclusions**

The discussions in previous chapter brings out the roles, obligations and implications for a maritime administration, when a global security agenda has to be transformed into national system.

Shipping has never had to face security challenges in the way same that aviation has, but it seems that moment has come in the wake of the terrorist attack. The concentration on security, even at the expense of safety issues, has put the maritime administration under tremendous pressure, both in terms of workload and priorities. While the most pressing security challenges will have to be met with existing authorities, the work to build a new network of protections – one that transforms what has been a rapid response into a sustained effort that recognizes heightened security as a part of normal operations must go on. In addition, marine security depends on the users of the system, shippers and operators, and affects the trade corridors they use and hence requires a concerted partnership approach.

It is required that each contracting state "establish an organization, develop plans and implement procedures, which together provide a standardized level of security for the operation of ships in normal operating conditions and which are capable of rapid expansion, to meet any increased security threat." Maritime players are generally concerned about how to achieve harmonized, simple and effective security measures. Thus, the continued co-ordination of national efforts and initiatives in the area of maritime security is important. Even at the national level there are a number of participants connected with the issue.

Before the maritime system can be truly secure, all components of the system -- ships, ports, shipping companies, cargo shippers, government agencies must accept a critical role. All of these players have to take their responsibilities seriously. Like a chain, this system is only as strong as its weakest link. A potential perpetrator will try to find that weakest link, even though the target may be halfway around the world. States are required to accept global collective responsibility to ensure that the entire system is secure. Further to avoid unilateral action to be taken by high-risk states, committed national strategies are essential. The role of administration as a regulator and facilitator of service, with regard to security is varied, challenging and new. It has to find a balance between overreaction and under reaction keeping in mind the national interests, global interests and industry's interest.

The proposed steps being taken at the IMO places a lot of responsibilities on the contracting states, to identify and rectify the shortcomings, still identifying deficiencies is one thing; correcting them yet another. Although all countries have the political will to do so, many lack the necessary technical or financial resources to take action. IMO in recognizing this fact has provided for technical and financial support to developing states. The code provides for a risk management matrix that would presents a "menu" of measures that are considered equivalent at each level of threat. When a state implements any of the measures deemed equivalent, this should be sufficient evidence it can cope with an increased threat and does not need to implement further measures.

The legal system at the national level is the fulcrum of entire machinery. It has been evident that this aspect is mostly neglected so far. States must transform their legislations to incorporate maritime violence and other acts to establish jurisdiction. SUA convention and CMI Model law provide the instruments but the low ratification of this convention illustrates the priority accorded to these areas by states.

Finally, efforts to enhance maritime security worldwide call for closer cooperation between industry and government, a situation that should be facilitated by the emergence of an industry action group. The funding of maritime security needs to be considered by the government appropriately, taking into account the present situation of economy in general and industry in particular. While states clearly have a responsibility to establish regulations, it is crucial that governments consult with the industry before new maritime security regulations are put in effect. This will help regulators to develop language that is well understood by the industry, as well as generate awareness of the financial impact of a proposed regulation. This kind of cooperative relationship will ensure that the measures adopted are effective, efficient and manageable, thus achieving a higher-level of security by facilitating compliance.

## **6.2 Recommendations**

This paper brings out some the issues that are essential to the success of global maritime security initiated at the national level. It is further recommended that countries should take note of the following recommendations, which will enable them to cope up with the security aspects more effectively:

### **6.2.1 Defining the acts**

The definition of piracy, armed robbery or terrorist acts with in the international arena is still surrounded by controversies, and till such time a consensus is reached the national legislation should provide a clear understanding of the terms and the acts. This will enable the authorities with clear-cut responsibilities and jurisdiction.

### **6.2.2 Issues relating to interdiction and coastal states obligations**

Maritime interdiction forms a major preventive activity and since it is again unclear on the issues of legalities, national administrations must work towards finding an

international solution to this aspect. Again whether there is an obligation on coastal states to provide foreign ships a secure passage within their territorial water is a debated issue, much depends upon the will and the capabilities of the coastal state to provide this. However, it is an issue, which is of utmost relevance since over 80% of acts of violence, occur in this zone. If a country finds itself incapable of providing security within its waters, regional or bilateral agreements should be reached to ensure this.

### **6.2.3 Ratification and implementation of international Conventions**

To reach uniformity, ratification and effective implementation of international convention must be achieved. SUA Convention is presently ratified by less than 50% of the IMO member states. Such poor ratification will ultimately leave a lot of gaps and safe havens for the perpetrators, which are needed to be closed.

### **6.2.4 Clear guidelines to all**

Governmental efforts to improve the security of international shipping against the risk of terrorism should be consistent with the following general principles:

- 1) The government should establish a single, coordinated strategy to address the issue of international liner shipping security.
- 2) There should be clear, mandatory rules regarding:
  - What is required of carriers,
  - What is required of shippers and consignees,
  - What is required of intermediaries, and
  - What is required of other parties who handle the container, such as marine terminal operators, truckers, and railroads?
- 3) Those rules should be uniformly applied and enforced.
- 4) Those rules must allow for the efficient flow of trade.

### **6.2.5 Strengthening of private international laws**

Different groups should share the risk of the threats in order to provide development to the industry and trade. Presently the insurance clauses for hull and machinery, cargo and other marine risks are either silent or are vague. The private international laws such as those for bills of lading, charter party and marine insurance, must be strengthened to provide risk sharing in events of acts of maritime violence. National administration should support and encourage development of such laws.

### **6.2.6 Addressing the Cause**

The cause of these acts, although lying outside the domain of maritime industry, will have to be considered by the administration. The role of the administration lies in highlighting the adverse effects of these acts on the industry and the trade to the responsible government agencies within the country. The security issue is a top down approach due to such diversity.

### **6.2.7 Funding and incurring Costs**

A major constraint is the availability of funds to support the security initiatives. Sectors of industry must be supported by the Government agencies appropriately. The Indian case of prosecution and investigation into *Alondra Rainbow* highlighted the issue of incurring costs. The Indian Government so far in capturing and prosecuting the pirates has incurred costs of about 2 million dollars. How best to solve the problem, without putting undue pressures on the contracting parties must be recognized. If some system of funding is not provided, it will deter the states to take action against criminals and thereby encourage the perpetrators. Administration must bring these issues in the international forum to be addressed suitably.

#### **6.2.8 Role of crew state**

The role of the crew state is noteworthy, as the security threats are different than safety threats for which flag state is wholly responsible. In case of security threats to crew, the crew state responsibility in protecting the lives of its citizen even outside the country is absolute. The administration must impress upon creation of suitable systems to address these issues especially in high-risk waters. It may involve going into regional or bilateral treaties with other states to protect the crew. Crew state is also responsible for welfare of the crew in terms of his shore leave and repatriation, which may be endangered if proper papers are not provided to them.

#### **6.2.9 Removing bottlenecks and improving efficiency**

Since the additional work of security is going to create bottlenecks in transportation and trade to a certain extent, it is necessary for the administration to remove the existing bottlenecks in other areas so that multiplication effect is not encountered. The transport efficiency overall should be improved without compromising safety and security.

#### **6.2.10 Training and Human Resources**

Training is a vital step towards achieving a security solution. The training institutions must be strengthened to give additional security inputs. Implementation of revised the STCW Convention itself is lagging behind and unless serious steps are taken to provide security training the complications are going to be serious. Countries must taking steps in advance to avoid falling back in implementation process.

It is the conclusion of this dissertation that adoption of the above recommendations will greatly assist countries in guiding the evolution of global maritime security culture.



## REFERENCES

- Abhayankar, J. (2002). *Maritime Security and Crime*. Unpublished lecture handouts, World Maritime University, Malmo, Sweden.
- Alderton, P.M. (2002). Maritime Economics of Security. *Maritime Policy and Management*, 29, 105-106
- Annan, K. (2001). Secretary General's speech at the UN general Assembly on October 2<sup>nd</sup> 2001. United Nations. New York
- Beckman, R.C. (1999). *Developing an International Legal Framework to Enable Governments to more effectively combat Piracy and armed robbery against ships*. Paper presented at Piracy Seminar on 22<sup>nd</sup> October 1999, Singapore, Organized by Society of International Law Singapore
- Berlusconi, S. (2001). *Terrorism and Anti-Globlaization*. International Herald Tribune, November 11, 2001
- Birnie, P.W. (1987). Piracy: Past, Present and Future, *Marine Policy*, 11, 163-183
- Bruke, T.W. (1975). *National and International Law enforcement*. University of Washington Press, Washington
- Bruke, W.T. & Legatski, R. (1975). *National and International Law Enforcement in the Ocean*. Washington. University of Washington Press
- Cardiff University. (2002). *Crewing The International Merchant Fleet*. Surrey. Lloyds Register- Fairplay Ltd.
- Clinton, B. (2001). *The struggle for the soul of the 21<sup>st</sup> century*. Richard Dimpleby lecture 2001. Retrieved from world wide web on June 23<sup>rd</sup> 2002 at [http://www.bbc.co.uk/arts/news\\_comment/dimpleby/clinton.shtml](http://www.bbc.co.uk/arts/news_comment/dimpleby/clinton.shtml)

- CMI. (2001). *Model National Law on Acts of Piracy or Maritime Violence*. Singapore. Author
- Crickard, Fred.(1995). *Canada's Ocean and Maritime Security*. Maritime Policy. Vol19 No.4 pp 335-342
- Damas, P. (May 2002). IMO Focus on Ship/Port Interface. *American Shipper*, pp 31-38
- DeBivere, A. (March/April 2002). Squaring The Circle. *Seatrade*, pp 17-19
- DeBievre, A. (2002). *Safety or Security? Observation about CSR*. BIMCO News, 6<sup>th</sup> June 2002, pp6 , London. BIMCO
- DNK Report. (2002). *Shipping in the aftermath of September 11: Markets, Politics, preparedness and war risk insurance*. Norwegian Shipowners' War Risk Insurance Association(DNK). Oslo. Author
- ESPO. (2002). Port and Maritime Security- Initial Views of ESPO. Brussels. Retrieved from World Wide Web on 22<sup>nd</sup> July 2002 at <http://www.espo.be>
- Gaza, G. (1990). Measures against Terrorist Acts Under International Law. In N Ronzitti (Ed.) *Maritime Terrorism and International Law*. (pp 25-42). Dordrecht. Maritime Nijhoft Publishers.
- Goldie, L.F.E. (1990). Legal Proceedings Arising From the Achille Lauro Incidence in the United States of America. In N. Ronzitti (Ed.) *Maritime Terrorism and International Law*. (pp 107-128). Dordrecht. Maritime Nijhoft Publishers
- Hand, M. (2002, August 28). *IMO Warns owners on the Terrorist Deadline*. Lloyd's List pp 4
- Hawkes, K.G. (1989). *Maritime Security*. Maryland : Cornell Maritime Press.
- Hoffman, B. (1998). *Inside Terrorism*. New York. Columbia University Press.
- ILO. (2002). Report of the Director-General, Third Supplementary Report: Urgent

item on the agenda of the 91st Session (June 2003) of the International Labor Conference, concerning improved security of seafarers' identification. Geneva.

Ilves, T.H. (2001). Terrorism Must Be Addressed in Parallel with Poverty, Underdevelopment, Inequality, General Assembly Told, As General Debate Concludes," Fifty-Sixth General Assembly, GA/9971, November 16, 2001, Retrieved from World Wide Web at <http://www.un.org/News/Press/docs/2001/ga9971.doc.htm>.

IMO. (2002). Maritime Security: Combating acts of violence and crime at sea. Retrieved from World Wide Web on 22<sup>nd</sup> July 2002 at <http://www.imo.org/home.asp>

IMO Agrees Raft of Measures to bolster Ship Security.(April 2002). *Safety at Sea International*, pp 6

IMO. (2002). *Detail Preparation for Maritime Security Conference Surges Ahead*. IMO News, Issue 2, (pp 5-6), London. Author

IMO. (2002). *IMO agrees Raft of Measures to Bolster Ship Security*. IMO News, Issue 2, (pp 6-8), London. Author

IMO. (2001). *IMO to Tackle Security Issues in Wake of Terrorist Activities*. IMO News, Issue 4, (pp 5-6), London. Author

IMO. (2000). *Focus on IMO : Piracy and Armed Robbery*. London. Author

IMO Legal Committee 84<sup>th</sup> Session documents. London

International Convention on the Law of the Sea 1982 (UNCLOS), U N. 1982

International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL 73/78), IMO,1997

- Intertanko Reports (2002) retrieved from world wide web at [www.intertanko.com](http://www.intertanko.com)
- International Convention for the Safety of Life at Sea 1974 (SOLAS), IMO, 2001
- International Maritime Organization, Working Group on Maritime Security - MSC /IMO. (2002,May 22). *Working papers on Prevention and Suppression of acts of Terrorism against Shipping, MSC 75/WP.18*. London, UK: Author
- ITF. (2002). *Ship Security and Terrorism*. Transport International,( pp 7-10). London. Author
- Ivie, R.L. (2002). *Terrorism at Democracy's Frontier*. Paper presented at Manchester College on April 17<sup>th</sup> 2002, Manchester
- Joshi, R. (2002, August 29). *Shipping's big hitters step up battle against US-clampdown on Shore leave*. Lloyd's List, pp 6
- Justified Paranoia : US security to Expand Abroad. (2002, Feb 14). *Fairplay*, pp 17-19
- Kanazaki, M. (1992). International Consultative Mechanism Related to Maritime Security, *Maritime Security: The Building of Confidence*, (pp 148-158). New York, United Nations Institute for Disarmament Research
- Keyum, Z. (2000). Piracy at Sea and China's Response, *Lloyd's Maritime and Commercial Law Quarterly*, Part 3, 364 - 382
- Koch, C. (2002). Maritime Security and International Trade. Retrieved from World Wide Web on 18<sup>th</sup> July 2002 at <http://www.worldshipping.org>
- Loy, J.M. & Ross, R.G. (2002). *Meeting the Homeland Security Challenges : A principled Strategy for a Balanced and Practical Approach*. Washington. ANSER

Maitland, C. (2002). *Maritime Security and the IMO : Where Does it fit in? What is it Doing?* Paper Presented at the Marine Log Conference on Maritime Security 2002, Washington DC.

Marcus, D. (2002). *Securing our Trade Routes: Possible Solutions*. Testimony at US Senate Sub Committee Hearing on July 1<sup>st</sup> 2002. Washington

Mbiah, K. (2002). *Revision of SUA Convention and Protocol*. Unpublished paper Presented at Symposium on Maritime Violence and other Security Issues at Sea, held on 26<sup>th</sup> – 30<sup>th</sup> Aug 2002, at World Maritime University, Malmo, Sweden

McDorman, T.C.(2001). *Terrorism and The Law of The Sea: Some Emergent Issues*. Paper presented at the CANCAPS Conference on Dec 9<sup>th</sup> 2001 at Vancouver

McHugh, M. (May 2002). Supply Chain Link Security. *American Shipper*, pp 27-29

Menefee, S.P. (2002). *A Model National Law on Acts of Piracy or Maritime Violence*, Unpublished paper Presented at Symposium on Maritime Violence and other Security Issues at Sea, held on 26<sup>th</sup> – 30<sup>th</sup> Aug 2002, at World Maritime University, Malmo, Sweden

Menafee, S. P. (1993). Any port in a storm – A worldwide threat to port security in *Ports at risk*. London, UK : Witherby

Menefee, S.P. (1998). *Adding Bight to existing Conventions by Developing effective National laws concerned with the investigation and prosecution of ship hijacking*. Paper presented at seminar by Society of International Law, Singapore

Menefee, S.P. (1990). Piracy, Terrorism and the Insurgent Passenger – A Historical and Legal Perspective. In N. Ronzitti (Ed.) *Maritime Terrorism and International Law*. (pp 43-68). Dordrecht. Maritime Nijhoft Publishers.

- Michel, K. (Dec, 2001). *War and Terrorism: Legal Considerations*. Seaways, 9-11
- Mukherjee, P.K. (2001). *Implementation of Maritime Legislation through National Legislation*, Unpublished lecture Handouts, World Maritime University, Malmo, Sweden.
- Mukundan, P. (2000). *Piracy on the High Seas: Can you afford it?* Paper presented at the Institute of Insurance on 7<sup>th</sup> Nov 2000 at London.
- Nelson, L.D.M. (2002). *The Virginius Revisited*. Unpublished keynote paper presented at Symposium on Maritime Violence and other Security Issues at Sea, held on 26<sup>th</sup> – 30<sup>th</sup> Aug 2002, at World Maritime University, Malmo, Sweden
- O'Neil, W. (2001). *Safety and Security now Inextricably Linked*. IMO News, No 4, pp 4 London. IMO
- OECD. (2002). *Economic Consequences of Terrorism*. OECD Economic Outlook 71, pp 118-140, Paris. Author
- Parritt, B.A.H. (1991). *Security at Sea: Terrorism Piracy and Drugs- A practical Guide*. London. The Nautical Institute.
- Parritt, B.A.H. (1992). *Stowaways by Sea: Illegal Immigrants – Refugees –Asylum Seekers*. London. The Nautical Institute.
- Parritt, B.A.H. (1996). *Crime at Sea: A practical Guide*. London. The Nautical Institute.
- Pinto, C. (1992). Maritime Security and The 1982 United Nations Convention on Law of The Sea, *Maritime Security: The Building of Confidence*, (pp 9 – 53). New York, United Nations Institute for Disarmament Research
- Ronzitti, N. (1990). The Law of the Sea and the Use of Force Against Terrorist Activities. In N. Ronzitti (Ed.) *Maritime Terrorism and International Law*. (pp 1-14). Dordrecht. Maritime Nijhoff Publishers

Ronzitti, N. (1990). The Prevention and Suppression of Terrorism Against Fixed Platform on the Continental Shelf. In N. Ronzitti (Ed.) *Maritime Terrorism and International Law*. (pp 91-96). Dordrecht. Maritime Nijhoft Publishers

Schaefer, B.D. (2002). UN Treaties and Conferences will not stop Terrorism. The Heritage Foundation Backgrounder, Jan 17<sup>th</sup> 2002. Retrieved from World wide Web on 20<sup>th</sup> July 2002 at <http://www.heritage.org>

Schubert, W.G. (2002). Vessels operation under Flag of Convenience. Statement before Special oversight Panel on the Merchant Marine, US House of Representative. Washington DC. Retrieved from World Wide Web on 22<sup>nd</sup> July 2002 at <http://www.marad.dot.gov/Headlines/testimony/flag-of-convenience.html>

Statement by the President of the General Assembly at the Conclusion of the Plenary Meetings on Measures to Eliminate International Terrorism," October 5, 2001, Retrieved from World Wide Web at <http://www.un.org/terrorism/statements/gapresconclusion.html>

SUA Convention and Protocol, 1988

Subedi, S.P. (1996). *Land and Maritime Zones of Peace in International Law*. Oxford: Clarendon Press.

Taylor. Terence. (2002). *Law of War in the Age of Terror*. Extracts from debate conducted by London School of Economics. London.

The White House. (1999). *A national security strategy for a new century*, Washington DC. Retrieved from World Wide Web on 20<sup>th</sup> July 2002 at [http://www.dtic.mil/doctrine/jel/other\\_pubs/nssr99.pdf](http://www.dtic.mil/doctrine/jel/other_pubs/nssr99.pdf)

Talbot, R.M. (2002). *Does American Tragedy reveal a new face of terrorism?* Working paper published by New Castle Law school.

Treves, T. (1990). *The Rome Convention for the Suppression of Unlawful Acts against the safety of Maritime Navigation*. In N. Ronzitti (Ed.) *Maritime Terrorism and International Law*. (pp 69-88). Dordrecht. Maritime Nijhoft Publishers

UN Treaties Against Terrorism Retrieved from World Wide Web on 20<sup>th</sup> July 2002  
at <http://untreaty.un.org/English/Terrorism.asp>

UN.(2002). Report of the Secretary General on Ocean and Law of the Sea. New  
York

UNCTAD. (2002). Review of Maritime Transportation 2001. Geneva.

US Customs (2002). Fact Sheet on CSI. Retrieved from World Wide Web on 20<sup>th</sup>  
July 2002 at <http://www.customs.ustreas.gov/news/news.htm>

USCG. (1999). *Threats and Challenges to Maritime Security 2020*. Washington.  
Author

USCG. (2002). *Meeting the homeland Security Challenge: Maritime and other  
critical dimensions*. Washington DC. Author

Verma, V. (2002). Securing our Trade Routes: Possible Solutions. Testimony before  
Senate Sub-Committee on Surface Transport and Merchant Marine. Seattle  
Washington.

Williamson, D. (Nov, 2001). *Terrorist Attacks: The Security Officers Role on  
Passenger Ships*. Seaways, 13-16

Yamamoto, S. (2001). *The Evolving Law and Policies of the Sea*. Gaiko Forum 2002,  
Tokyo



## Appendix A

### United Nations Conventions on Terrorism

- Convention on Offenses and Certain Acts Committed on Board Aircraft (1963);
- Convention for the Suppression of Unlawful Seizure of Aircraft (1970);
- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (1971);
- Convention on the Prevention and Punishment of Crimes Against Internationally Protected People (1973) (outlaws attacks on senior government officials and diplomats.);
- International Convention Against the Taking of Hostages (1979);
- Convention on the Physical Protection of Nuclear Material (1980);
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviations (1988);
- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988);
- Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (1988);
- Convention on the Making of Plastic Explosives for the Purpose of Detection (1991);
- International Convention for the Suppression of Terrorist Bombing (1997) and
- International Convention for the Suppression of the Financing of Terrorism (1999).

## Appendix B

### IMO's Capacity Building Initiatives

Activity	Objective	Status	Completion
1	Preparation of an outline programme for subsequent training workshops	Completed	February 2002
2	Development of detailed lesson plans and presentations for instructors	On-going	April 2002
3	Translation of training materials	On completion of Activity 2	June 2002
4	Delivery of 14 sub regional workshops	Under preparation	Continuous to December 2003
5	Delivery of advisory missions and national workshops	On request	Continuous to December 2003
6	Provision of fellowships and on-the-job training attachments	On request	Continuous to December 2003

## Appendix C

### Countries and Registration

Countries Registration	GT	% share	Age	Countries ownership	%age share
Panama	112,106	14.4	16	Greece	18
Liberia	49,970	6.4	12	Japan	13
Bahamas	30,787	4.0	16	Norway	8
Malta	27,949	3.6	19	USA	7
				Peoples' Republic of	
Greece	25,902	3.3	24	China	5
Cyprus	23,055	3.0	11	Hong Kong, China	4
Norway	21,428	2.8	15	Germany	4
USA	21,118	2.7	24	Republic of Korea	4
				Taiwan Province of	
Singapore	20,971	2.7	11	China	3
Peoples' Republic of					
China	15,332	2.0	20	UK (inc IOM & CI)	3
Total Top 10	348,618	45	18	Singapore	3
				Total by Big Group	72
Rest of The Countries	430,182	55	24	Rest of the World	28

Top 10 countries in terms of Registration and Ownership

Source : ISL Bremen

## Appendix D

### The Specific work of IMO Working Groups

IMO's ISWG (in February 2002) made decisions on the following topics

- Automatic Identification Systems (AIS) – Proposed amendments to SOLAS regulation V/19.2.4;
- Long-range AIS interface;
- Ship and offshore facility security plans;
- Ship security officer;
- Company security officer;
- Port facility security plans;
- Port vulnerability assessment;
- Seafarer identification verification and background check;
- Container examinations and co-operation with the World Customs Organization (WCO);
- Information on the ship, its cargo and people;
- Means of ship alerting; and
- Ship security equipment.

The other security related resolution adopted by MSC 75 include

- Adoption of amendments to the Annex to the International Convention for the Safety of Life at Sea, 1974, as amended
- Adoption of the International Ship and Port Facility Security (ISPS) Code
- Further work by the International Maritime Organization pertaining to the enhancement of maritime security
- Future amendments to part B, chapter XI of the 1974 SOLAS Convention on special measures to enhance maritime security

- Promotion of technical co-operation and assistance
- Early implementation of the special measures to enhance maritime security
- Establishment of appropriate measures to enhance the security of ships, port facilities and fixed floating platforms not covered by part B of Solas chapter XI
- Co-operation and further work with the International Labor Organization (ILO), IMO/ILO work on port security – terms of reference
- Co-operation with the World Customs Organization

## Appendix E

### IMO INSTRUMENTS RELATED TO MARITIME SECURITY

- 1 Resolution A.584(14) – Measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews
  - 2 MSC/Circ.443 – Measures to prevent unlawful acts against passengers and crews on board ships
  - 3 MSC/Circ.622/Rev.1 – Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships
  - 4 MSC/Circ.623/Rev.2 – Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships
  - 5 MSC/Circ.754 – Passenger ferry security
  - 6 Convention for the Suppression of unlawful acts against the safety of maritime navigation; and its Protocol for the Suppression of unlawful acts against the safety of fixed platforms (both adopted in Rome in 1988)
  - 7 Resolution A.871(20) - Guidelines on the allocation of responsibilities to seek the successful resolution of stowaway cases
  - 8 Resolution A.872(20) - Guidelines for the prevention and suppression of the smuggling of drugs, psychotropic substances and precursor chemicals on ships engaged in international maritime traffic
  - 9 Resolution A.924(22) - Review of measures and procedures to prevent acts of terrorism which threaten the security of passengers and crews and the safety of ships
-